

New Hampshire
State Board of Education
Minutes of the February 8, 2018 Meeting

AGENDA ITEM I. CALL TO ORDER

The regular meeting of the State Board of Education was convened at 10:05 a.m. at the State Department of Education, 101 Pleasant Street, Concord, New Hampshire. Drew Cline presided as Chairman.

Members present: Kate Cassady, Cindy Chagnon, Drew Cline, Chairman, Sally Griffin, Helen Honorow, Anne Lane, and Phil Nazzaro. Frank Edelblut, Commissioner of Education, and Christine Brennan, Deputy Commissioner of Education, were also present.

AGENDA ITEM II. PLEDGE OF ALLEGIANCE

Board members led the Pledge of Allegiance.

AGENDA ITEM III. PUBLIC COMMENT

There were no public comments.

AGENDA ITEM IV. SPECIAL PRESENTATIONS

A. North Country Charter Academy – Lisa Lavoie, Principal, introduced members of her board of trustees. The Vice Chairman of the Board of Trustees, Nancy Wilson, provided comments of support and thanks to Principal Lavoie and her staff for their continued dedication and commitment. Today's presentation is to provide an update to the Board of Education of the continued successes of the academy. Board Member and Superintendent of Lin-Wood Public Schools, Ms. Judith McGann, added that the very tight collaborative environment between all the school boards, superintendents, administrators, counselors, and families has been an important factor to the academy's success and its student population covers approximately 4,000 square miles of the northern part of the state. Students of the academy have the choice to graduate with their school district peers or with their academy peers, or participate in both ceremonies. The North Country communities are dedicated and invested in the programs which enable sustainability to be successful. Ms. McGann thanked the Board for listening and their continued support.

Ms. Lavoie introduced the charter school students, their parents and charter school staff attending today's presentation. The year-end report for the 2016/2017 school year has been provided to the State Board for review. The year-end report is a symbol of accountability and highlights the successes of a nontraditional model of education that has been working for 14½ years. Ms.

Lavoie noted that the American Legion has recently been added to the list of donors to the academy's scholarship fund, and each year the academy's project-based and community-oriented learning projects continue to expand. These projects center on poverty, substance misuse, social justice and more.

Student speakers Lucy Bissonnette, Jared Gagnon, Lucas Poole, and Emily Treyhan each spoke to the Board about their experiences and successes since coming to the academy.

Ms. Bissonnette presented a portion of a podcast created as a charter school project about the opioid epidemic. This project was started last year and was presented last May at the North Country Youth Summit on Substance Abuse at the Rialto Theater in Lancaster, NH.

Mr. Scott Kleinschrodt of the academy presented Commissioner Edelblut with a photograph taken of the Commissioner at graduation with last year's graduating class and thanked him for his support.

Chairman Cline thanked everyone and requested a link for access to the podcast.

Ms. Honorow expressed her pleasure at receiving the year-end reports from the academy each year and added that it is a wonderful representation of work that's done in charter schools particularly in the North Country where the academy continues to do more than has been asked.

Ms. Chagnon stated this is a prime example of good that can occur when there is collaboration and congratulated and thanked everyone.

B. Verville/School Administrative Unit #53 – SB-FY-18-07-000 - Mr. Verville was sworn in by Chairman Cline. Mr. Verville summarized his case for the State Board. The original complaint in 2016 was that SAU #53 did not meet the legal requirement for establishing a new administrative position. The SAU Board made district decisions that the law says must be made by the districts, not the SAU, and a 60% threshold vote to pass such decisions was not met. He disagrees with the report of the Hearing Officer and believes that the State Board of Education meeting is the correct forum for his appeal. He requested the State Board consider the merits of his case and asked that board deliberations for this hearing be made public.

Attorney Dean Eggert, representing SAU #53, provided a supplemental memorandum of law to the State Board and reminded them that they lacked jurisdiction to enforce and interpret statutory law. Mr. Verville's position is that each district should have gone back to their respective school districts and the members of those school boards vote separately rather than as a whole. In response to a question from a Board member, he noted that SAU #53 did

ascertain 60% vote approval needed on October 27, 2016. Attorney Eggert stated that Mr. Verville's case does not meet statutory definition under administrative procedure act. He asked the State Board to affirm and accept the report and recommendation of the Hearing Officer.

Chairman Cline stated Ed 212.02 requires all deliberations to be held in a nonpublic session; however, it's been noted there may be a conflict between the statute and the Right to Know law. In keeping with the Right to Know law and Mr. Verville's request, board deliberations will be in public.

Chairman Cline referenced the statute, RSA 194-C:5, I (c), and stated that Mr. Verville's interpretation may have some merit in the way the statute is written. Ms. Chagnon agreed and had questions about the quorum issue and administrative position definitions.

Ms. Honorow stated she was disinclined to have the State Board be the decider of the facts in this situation. The merits have not been addressed sufficiently because of a jurisdictional question that happened. She urged fellow board members to focus more on finding out what happened and provide each party the opportunity to do that. She did not think this was a dispute under RSA 21-N:11 and that the board may have some supervisory authority under RSA 186:5 to try and address this situation.

MOTION: Helen Honorow made the following motion, seconded by Ann Lane that the State Board reviewed the Hearing Officer Report and Recommendation and considered the arguments of the parties at the State Board meeting held on February 8, 2018. The State Board accepts the Hearing Officer report to the extent it held that the matter does not constitute a "dispute" under RSA 21-N:11, III. The State Board does not accept the report to the extent it held that the State Board does not have jurisdiction to consider the issues raised in the appeal. Rather, the State Board has authority to consider complaints regarding the operation of school districts under its general supervisory authority set forth in RSA 186:5. Accordingly, the State Board refers Mr. Verville's complaint to the Department for further review and investigation, and after that, come back, if necessary, with some sort of report or recommendation to this State Board, but not through the hearing process.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

Chairman Cline summarized the motion by explaining this came before the Board of Education as a dispute to be resolved in adjudication. The motion

would accept the Hearing Officer's report to the extent that it says this is not something that we can adjudicate. However, it would not accept the portion of the report that says we have no authority. We are asserting authority under RSA 186:5 to hear this complaint, not to resolve the dispute in the adjudicatory process.

C. Student/Dresden School Board – SB-17-05-004 – Attorney Dean Eggert is before the State Board to give them the opportunity to correct what he feels is a procedural defect. The State Board of Education remanded this matter back to the school board in December because there had been no school board hearing and this Board felt the parents were entitled to that hearing. Attorney Eggert feels the proper procedure for the State Board would have been to recommend the Hearing Officer review his decision.

Ms. Chagnon explained that she still feels the local school board jumped to the issue of denial of reimbursement before having a hearing on the manifest educational hardship as a result of bullying.

Attorney Eggert proceeded to explain what the courts look at in regards to relief whether there is jurisdiction to grant the relief being sought. In October 2014 the request was for tuition reimbursement and the statute indicates it is the parent's burden to demonstrate manifest educational hardship.

Chairman Cline reminded Attorney Eggert statute RSA 193:3 gives local school boards and State Board of Education authority to remedy a situation if it is found there is a manifest educational hardship; however, the local board and the State Board are handicapped in that ability if there is no hearing to determine hardship. There can be no remedies discussed unless there is first a determination of hardship, which was never done.

Ms. Nancy Menton and Mr. Daniel Mendelsohn (parents) were sworn in by Chairman Cline. Ms. Menton provided a history of this process and what led them to be before the State Board. This matter goes back to 2014 and their daughter has since graduated. There was never a hearing by the Hearing Officer or anyone regarding manifest educational hardship. Bullying incidents leading to a change of schools was well documented and due process was denied at the very beginning. The Hearing Officer and the school board are stuck on the reimbursement aspect and refuse to hear them.

Ms. Menton and Mr. Mendelsohn chose to have the State Board's deliberations held in public.

Chairman read the statute and explained process and said the bottom line is the Board is not at a point to talk about remedies. The school district's position was not to have a hearing. The Board's point was the determination of hardship.

Ms. Honorow stated the request before us is the motion for reconsideration. The school district has brought that motion, the parents have objected, and we need to focus on this.

MOTION: Helen Honorow made the following motion, seconded by Cindy Chagnon, that the State Board of Education deny the motion for reconsideration.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

D. Capital City Charter School, Concord, NH - Ms. Stephanie Alicea, founder and director, provided handouts and reviewed biographies of her board members. The goals and overview materials were submitted on November 9, 2017 and Ms. Alicea provided an overview of the program and a short video from a teacher's perspective of the service learning curriculum. Capital City Charter plans to provide an integration of service using a researched-based teaching method of guided classroom learning to create an alternative choice for grades 6 through 8 beginning in the first year for 60 students and 4 teachers with a goal of serving grades 9 through 12 by the fifth year with 330 students and 21 teachers.

Once approval is granted by the State Board, February and March will be spent creating policies and developing curriculum with assistance from Cathryn Berger Kaye who is an international service learning and education consultant. The Board of Trustees will be established and plans will be solidified for the building and information sessions will be begin and run from March to August. Plans are to advertise for staff in March and April and in July conduct a three-day service learning-based staff training seminar in New York. July and August will be dedicated to teacher orientation and training.

Ms. Chagnon stated she has researched the concept and feels it is very well thought out but had concerns about space. Ms. Alicea stated that they were working on the purchase of a newer building that will be accessible for students and buses with no disruption to traffic.

In response to questions regarding the appearance of a lean budget and concern about covering expenses, it was explained that there have been many offers from advocates and community members willing to donate different items, such as Chrome Books and furniture. Local merchants have also offered discounts for purchases and fundraising is planned. There was also discussion about starting salaries.

Ms. Honorow questioned how they plan to meet or exceed the state standards and asked if competencies were being drafted. Ms. Alicea responded that Ms. Cathryn Berger Kaye will assist with this and the K-12 service learning standards overlap with our state standards and there will be a compare and

contrast of those standards to make sure there are no deficiencies. Ms. Honorow asked for clarification on page 29 of 45 regarding transportation of students. There appears to be a word missing. It was clarified that students living within the school district can take advantage of the existing school district bus routes and efforts will be made to assist those living outside the Concord area.

There was also a concern about the short school day. It was explained that drop off of students could begin at 7:15 AM with an open time for homework, service projects or other activities before classes officially start at 8:45 AM. The State Board was assured that the school would meet the required school hours and can make adjustments to the school day if there are issues.

Mr. Nazzaro asked if there was a plan to link content to standards (i.e., standards map). Ms. Alicea responded that linking content to standards was their intention. Mr. Nazzaro asked about attrition and if there was a plan in place for enrollment activities. Mr. Nazzaro also noted that “fundraising” was referenced several times and he encouraged the school to think of more along the lines of “development activities”, that fundraising may not be enough.

MOTION: Cindy Chagnon made the following motion, seconded by Ann Lane, that the State Board of Education approve the application for Capital City Charter School.

VOTE: The motion was approved by a vote of the Board with Kate Cassady opposed and the Chairman abstaining.

E. NH ESSA Plan Update – Heather Gage, Director, Division of Educational Improvement let the State Board know that the New Hampshire Every Student Succeeds Act (ESSA) plan that was submitted to the U.S. Department of Education on September 18, 2017 has been approved. Initial feedback was received on December 20, 2017, with a turnaround time of 15 calendar days for resubmission with clarifications. Ms. Gage publicly thanked everyone engaged in meeting the short turnaround deadline that took place over the holidays. The next steps will be putting together the business rules, the accountability system, making sure all sections of the ESSA plan focus on ensuring traditionally underserved students have excellent educational opportunities.

Today’s presentation will be conducted by Susan Lyons from the Center for Assessment, and will focus on the accountability section within ESSA to address specific questions asked by the U.S. Department of Education regarding the plan. Ms. Lyons provided a slide presentation that included a broad overview of ESSA accountability. A foundation has been laid for designing a system with indicators. The two indicators chosen were accountability and reporting. The accountability indicators are dictated by federal law. To make sure indicators

aren't penalizing schools with large proportions of students with limited English proficiency New Hampshire has chosen the option to have first year students' scores not included for accountability. They would take it the second year where growth would count but not achievement, and in the third year, achievement starts counting. Accountability systems for grades 3 through 8 and high school are listed separately. The accountability taskforce chose an equity indicator for grades 3 through 8 designed to incentivize schools to work closely with their lowest performing students. The high school indicator is postsecondary readiness.

Goals have to be set by law on the indicators of academic achievement, graduation rate, and English language proficiency. The taskforce wanted to base goalsetting on reality of past growth, historical achievement trends, and reasonable expectations going forward. These goals are statewide and the plan is to produce individual goals for all schools and the goals are only a barometer of how we are doing as a state, making sure we stay on track and continue to make progress. The summative determinations are used to identify schools for support. Schools with subgroups performing below the threshold will be flagged and improvement plans will be created by districts.

In response to a question about the Performance Assessment for Competency Education (PACE), Commissioner Edelblut noted that the waiver for the program is expiring and a renewal waiver request will be filed to continue the pilot that program. Ms. Gage added the renewal waiver application is not a request for grant dollars, it is to allow the continued utilization of the PACE program. There is continued interest from schools to be part of the Tier III program and the search for private grants to help support the program are ongoing.

Ms. Chagnon stated she was on the initial taskforce for No Child Left Behind and said the statement that ESSA has the potential to improve our educational system compared to No Child Left Behind is the understatement of the universe. This is the way to move forward and is pleased that New Hampshire is moving forward with this model.

AGENDA ITEM V. OPEN BOARD DISCUSSIONS

There was no Open Board Discussion.

AGENDA ITEM VI. LEGISLATIVE ISSUES/RULES

A. PUBLIC HEARING – Specialist in Assessment of Intellectual Functioning (SAIF) (Ed 507.19 and Ed 614.08) - The Public Hearing opened at 1:00 p.m. and closed at 1:30 p.m. There were no speakers.

B. Adopt – “Guiding Principles: The Code of Ethics for New Hampshire Educators” and Initial Proposal – Professional Education Requirements (Ed 505.07 and Ed 610.02) – Ms. Nicole Heimarck, with the New Hampshire School Board Association, introduced herself and other members of the Commissioner’s taskforce that were present. The Commissioner’s taskforce on ethics has been involved in this work since September of 2016. The Professional Standards Board (PBS) worked on the proposed code from September 2015 to about June 2016. There was some dissatisfaction with the original proposal and Commissioner Edelblut felt the code of ethics should be universally shared and shouldn’t have variations from district to district. At the same time, the legislature passed House Bill 210 which gave the State Board of Education rulemaking authority to engage in a Code of Ethics for educators which is to be implemented by July 1, 2018. The previous Code of Ethics expired in 1999 and the differences between Code of Ethics and Code of Conduct needed to be updated. Key recommendations of the taskforce are outlined in the executive summary. The groups involved included major professional organizations across the state to ensure a broad perspective.

Presentations and trainings are planned to prepare for Public Hearings and Public Comments here at the State Board level in April. The Code of Ethics is designed to be a support and set of guidelines for educators; whereas, a Code of Conduct is designed to draw a clear line in the sand and define that line. This will be proactive and provide guidance and tools to educators. There was a realization in New Hampshire that the field of education was lacking clarity particularly when it came to conduct and the investigatory process here at the Department of Education. The New Hampshire Principles of Professional Conduct defines that line in the sand and says what an educator can or cannot do and typically has sanctions tied to it. The Code of Ethics operates in the circumstances where there is no right or best answer to a situation.

The key point to note with the Code of Conduct is that it is attached to licenses and educator certificates and applies to certified individuals in schools and that the State Board of Education has the authority to grant or remove an educator’s certificate. It is also important to mitigate risks to schools, districts, educators, families and students and to protect student welfare. Ms. Heimarck reviewed highlights in the executive summary and pointed out important terms and definitions for both codes.

Clarity was needed around the differences between revocation and suspension. Public notification for suspensions were discussed and it was felt since suspension is temporary then publication should be temporary. Chairman Cline felt the resolution of a case also needed to be provided. A disciplinary measure has been added at the Department of Education which would be a written reprimand placed in the educator’s file. The Department wanted to have a mechanism in place to collect history if necessary to establish patterns of

behavior. It was noted that an immediate suspension of a license would be pursued if an educator is arrested for one of the Section V violations.

Chairman Cline questioned the use of the word “advocating” being legal or constitutional. Attorney Diana Fenton responded and explained it has to be put in context because the Code of Ethics is an aspirational document, not a requirement. In her opinion, there is no issue but will be looked at again. Ms. Heimarck added they recognize it’s not possible to design codes that address all hypotheticals but with the Code of Ethics specifically, a preamble was developed with the goal to put contextual elements to it that address concerns that may surface by different interpretations. All questions and concerns will be taken back to the taskforce for interpretation and solutions.

MOTION: Cindy Chagnon made the following motion, seconded by Ann Lane, that the State Board of Education approve the “Guiding Principles: the Code of Ethics for New Hampshire Educators” and approve the Initial Proposal for Ed 505.07 and Ed 610.02 Professional Educational Requirements with a Public Hearing set for April 12, 2018.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

C. Initial Proposal – Professional Code of Conduct and Investigations (Ed 501)

MOTION: Cindy Chagnon made the following motion, seconded by Kate Cassady, that the State Board of Education approve the initial proposal for Ed 501.01 and Ed 501.02 Purpose and Definitions, Ed 502.01 Confidentiality of Educator Certification Records, Ed 510 Principles of Professional Conduct, Ed 511 Investigations and Disciplinary Procedures, and Ed 512 Denial of Certification with a Public Hearing set for April 12, 2018.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

D. Initial Proposal – Mathematics Teacher; General Requirements Ed 507.26; Middle Level Ed 507.27; Upper Level Ed 612.17; Mathematics – Middle Level Ed 612.17 and Mathematics – Upper Level Ed 612.18

MOTION: Cindy Chagnon made the following motion, seconded by Ann Lane, that the State Board of Education adopt Initial Proposal Mathematics Teacher; General Requirements Ed 507.26; Middle Level Ed 507.27; Upper Level Ed 612.17;

Mathematics Middle Level Ed 612.17 and Mathematics Upper Level Ed 612.18 with a Public Hearing set for April 12, 2018.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

E. Final Proposal – Alternative Education and Career and Technical Education (Ed 1300)

MOTION: Cindy Chagnon made the following motion, seconded by Ann Lane, that the State Board of Education approve the Final Proposal for Alternative Education and Career and Technical Education (Ed 1300).

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

F. Final Proposal - Manifest Educational Hardship (Ed 320) – Attorney Diana Fenton explained that copies containing edits from the Office of Legislative Services (OLS) attorneys were provided to the State Board. Most edits are editorial in nature with a few substantive comments. At Chairman Cline’s request two versions were created. Version one has the editorial and the substantive changes OLS wanted with comments from Bonnie Dunham incorporated and Version two contains the editorial changes.

Ms. Honorow has significant concerns about the removal of the word “substantial” and prefers language that would make it clearer versus taking it out. Ms. Chagnon agreed and discussion centered on changes to the language. Commissioner Edelblut expressed his feelings that this approach doesn’t have fidelity to the law and feels the focus should be shifted away from a determination of hardship to relief. Ms. Honorow stated she did not interpret the statute the same way and noted that the State Board only sees a fraction of the cases that parents bring forward to their local school boards.

Chairman Cline stated the rule has to include a process for determining hardship and the controversy surrounding the rule is the perception that it is a gateway to getting tuition to another school. Ms. Chagnon pointed out the legislature is currently working on a new manifest educational hardship law and Ms. Honorow reminded her that the State Board knew this last spring and should not wait any longer for a new law to pass.

Chairman Cline suggested use of the word “compelling” to replace “substantial”. There is also a concern with “shall or may demonstrate” and Ms. Honorow suggested adding a comma after the word “may”. Attorney Fenton will take suggested changes back for review.

MOTION: Cindy Chagnon made the following motion, seconded by Phil Nazzaro, that the State Board of Education approve the Final Proposal for Ed 320 Manifest Educational Hardship, Version One, as amended.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

AGENDA ITEM VII. REPORTS AND NEW DEPARTMENT BUSINESS

There were no reports or new department business.

AGENDA ITEM VIII. OLD BUSINESS

There was no old business scheduled and Chairman Cline wanted to use this opportunity to discuss an issue from Agenda Item B Verville/School Administrative Unit #53 case. This case is very similar to the Green case from last month and is essentially the same legal case for categorization purposes. The Order in the Green case was issued and received by the parties. Since that case was deliberated in a nonpublic session and in compliance with RSA rules, Chairman Cline requested a motion to make those minutes publicly available.

MOTION: Helen Honorow made the following motion, seconded by Ann Lane, that the State Board of Education unseal the minutes from the nonpublic session of the Green case held on January 11, 2018.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

At this time, the Chairman requested the same categorization of the Green case as in the Verville case. This would mean rescinding the current Order and issuing a new one.

MOTION: Cindy Chagnon made the following motion, seconded by Kate Cassady, that the State Board of Education rescind the State Board of Education's Final Order in the Green case and recategorize the Green case as a complaint under authority of RSA 186:5.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

MOTION: Helen Honorow made the following motion, seconded by Ann Lane, that the State Board of Education reviewed the

Hearing Officer Report and Recommendation and considered the arguments of the parties at the State Board meeting held on January 11, 2018. The State Board accepts the Hearing Officer report to the extent it held that the matter does not constitute a “dispute” under RSA 21-N:11, III. The State Board does not accept the report to the extent it held that the State Board does not have jurisdiction to consider the issues raised in the appeal. Rather, the State Board has authority to consider complaints regarding the operation of school districts under its general supervisory authority set forth in RSA 186:5. Accordingly, the State Board refers Ms. Green’s complaint to the Department for further review and investigation.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.

Chairman Cline explained to Ms. Green that the motion authorizes the Department of Education to investigate her complaint.

AGENDA ITEM IX. CONSENT AGENDA

A. Meeting Minutes of January 11, 2018

B. Mill Falls Charter School Request for an Increase in Student Enrollment Starting in the 2018-2019 School Year.

MOTION: Cindy Chagnon made the following motion, seconded by Kate Cassidy, that the State Board of Education approve the Consent Agenda.

VOTE: The motion was approved by vote of the Board with Phil Nazzaro, Sally Griffin and the Chairman abstaining.

AGENDA ITEM X. TABLED ITEMS

There were no tabled items.

AGENDA ITEM XI. NONPUBLIC SESSION

There was no nonpublic session.

AGENDA ITEM XII. ADJOURNMENT

The meeting was adjourned at 4:50 p.m.

MOTION: Cindy Chagnon made the following motion, seconded by Phil Nazzaro, that the State Board of Education adjourn the meeting.

VOTE: The motion was approved by unanimous vote of the Board with the Chairman abstaining.



Secretary