

New Hampshire
State Board of Education
Minutes of the Wednesday, March 21, 2018 Meeting

AGENDA ITEM I. CALL TO ORDER

The regular meeting of the State Board of Education was convened at 9:00 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, Anne Lane, and Phil Nazzaro. Helen Honorow was not able to attend due to a prior commitment. 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

Margaret Drye, Plainfield, spoke in support of the parents in the Student/Grantham School Board presentation.

AGENDA ITEM IV. SPECIAL PRESENTATIONS

A. Student/Grantham School Board – SB-FY-18-12-002

Ms. Tanya McIntire, parent, was sworn in and chose to have this case heard publicly. This process started nine years ago with a request for placement of her child under manifest educational hardship that ended with the case being dismissed. Ms. McIntire's son was diagnosed with a learning disability in the second grade. He was enrolled in Mid Vermont Christian school in Vermont for six years and did well. A request for financial assistance was denied. Ms. McIntire's son returned to the public school system in high school and his grades dropped to Ds and Cs. He is now enrolled at Holderness and is doing well. Documentation and letters were provided to the State Board. Ms. McIntire believes the Grantham School District has the money to pay tuition for her child's attendance at a private school and is asking the State Board to reject the recommendations of the Hearing Officer.

Attorney Jim O'Shaughnessy of Drummond Woodsum and Sydney Leggett, Superintendent of Grantham School District, represented the school district. Ms. Leggett was sworn in by Chairman Cline.

Attorney O'Shaughnessy reviewed the history of the case. He explained that the Grantham School District has an Authorized Regional Enrollment Agreement (A.R.E.A.) with Lebanon and Plainfield. The Grantham School District, like every other school district in the state other than Croydon, does not have a private school tuition agreement with any private schools; therefore, the private school reassignment provision under RSA 193:3 does not apply in this case. This was another factor in the school board's denying the parents request for reassignment to Holderness. Attorney O'Shaughnessy provided background, stating the parents did litigate this same issue back in 2009 before a Hearings Officer and the State Board. The State Board in 2009 ruled that it did not have the authority to order placement under RSA 193:3 I and II to a private school. That rule hasn't changed and the State Board ruled properly under that law and that decision still applies. Attorney O'Shaughnessy also discussed the issue of collateral estoppel for a legal issue previously heard.

Chairman Cline asked if collateral estoppel would apply if the facts in a case change. Attorney O'Shaughnessy explained when it is a clear issue of law collateral estoppel would apply. He explained that the facts in cases can change. In this case the same issues of law apply.

Attorney O'Shaughnessy also explained that prior to the student returning to public school special education testing was done and those results were lost in the transition back to public school. He noted that as soon as the school district became aware of this they acted and are in the process of designing the student's Individualize Education Program (IEP) and discussing appropriate placement. Attorney O'Shaughnessy noted, as a matter of law, that school districts can't send special education students or students requiring special education services to private schools that have not been approved as a special education private school. Holderness is not an approved special education private school.

The Grantham School District is asking the State Board to uphold the decision of the Hearing Officer. Attorney O'Shaughnessy noted as a matter of law, that neither the local school board nor the State Board have the authority to assign students to private schools.

Chairman Cline requested clarification that the C and D grades noted by Ms. McIntire are considered acceptable by the district. Ms. Leggett stated that the grades were not all C's and D's and the student had a 2.99 GPA.

Commissioner Edelblut noted that the student's SAT scores were below the state median and was concerned that this performance is considered adequate. Attorney O'Shaughnessy objected to the discussion about the SAT scores as they have never been on the record or presented to the Hearing Officer for consideration. He also stated that he is very reluctant to discuss the student's grades in a public forum.

Chairman Cline asked why a hearing was not conducted by a Hearings Officer. Attorney O'Shaughnessy responded that there was a hearing conducted before a Hearings Officer. In response to Chairman Cline's question, he stated that the Hearing Officer at the hearing did not make a determination of manifest educational hardship.

Chairman Cline noted that this is the third appeals case of manifest educational hardship that has recently come before the State Board that at no time during the process was a determination made as to manifest educational hardship. The State Board cannot make a recommendation on a remedy until a determination is made on manifest educational hardship.

Attorney O'Shaughnessy interrupted the motion and requested his comments be on the record that this State Board is not following law and not abiding by its own past precedent. There are legal issues that are being ignored. The State Board is using this as opportunity to push back on school districts and make them re-litigate where the law is absolutely clear that the only role the State Board has is to decide whether there was a manifest educational hardship or not and if a parent is entitled to have their child reassigned to another public school.

Ms. Chagnon explained that the motion is to remand the matter back to the Hearing Officer for a determination, not the school district. Chairman Cline added that this process is to have a determination of manifest educational hardship before this can move forward.

Attorney O'Shaughnessy stated that this is the process under this State Board with Mr. Cline as the Chair and with Mr. Edelblut as commissioner that this is a political agenda being pursued through the State Board of Education.

Chairman Cline disputed the claim and noted the inappropriateness of accusing the State Board of a having political agenda.

MOTION: Cindy Gagnon made the following motion, seconded by Ann Lane that the State Board remand this matter back to the Hearing Officer for a determination of manifest educational hardship.

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

B. Student/Merrimack Valley School Board – SB-FY-17-06-005

The parties involved have opted not to present oral arguments. In this situation the State Board will base their determination and vote on the Hearing Officer's report and recommendation.

MOTION: Cindy Chagnon made the following motion, seconded by Ann Lane that the State Board accept the Hearing Officer's report and adopt the Hearing Officer's recommendation.

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

C. Keene School District 6th Grade A.R.E.A.

Ms. Chagnon noted that they have been working under a contract and are now moving to an Authorized Regional Enrollment Agreement (A.R.E.A.) and have met all requirements.

MOTION: Cindy Chagnon made the following motion, seconded by Ann Lane, that the State Board of Education approve the A.R.E.A. agreement between Keene and the School Districts of Stoddard, Sullivan, and Surry.

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

D. Program Approval Report for Rivier University's Professional Preparation Programs

Nicole Heimarck, with New Hampshire School Boards Association, previously of the New Hampshire Department of Education, is working with and presenting this project to ensure consistency and continuity for the educator preparation programs. A packet was provided to the State Board that includes a program approval report for educator preparation programs at Rivier University. Ms. Heimarck introduced Megan Birch, faculty member at Plymouth State University and Michael Fournier, Principal at McKelvie Intermediate School in Bedford, who were part of the review and site visit team. She also introduced John Gleason, Dean of School of Education and Diane Monico, Director of Educator Preparation Programs at Rivier University.

The recommendation before the State Board is for a two-year conditional approval that includes two progress reports and a full revisit in December of 2019. The reasons for the recommendation are itemized in the report provided to the State Board. The review team felt there was not yet enough evidence/data to make a complete recommendation or to assign a numeric rating. The team was able to interview stakeholders and highlighted that the student body was consistent in their communication of having a sense of pride in their institution. The team noted that Rivier's programs focus on personalization for its students.

Ms. Chagnon stated she was in favor of this type of program and asked if they were working with students to make sure they not only know the subject matter but can teach it as well. Mr. Gleason explained that two years ago there was a separation of pedagogy and content to help better prepare teachers to teach content.

Ms. Monico explained there are specific methodology classes for students taught by practitioners. A program is being piloted where students are advising themselves. She noted that while there are changes occurring in majors, students are staying in the fields of education and are making the right decisions based on their experiences.

In response to Ms. Chagnon's question about varied placements it was explained that students are placed in a variety of schools and situations, and placement in Nashua schools is convenient for students without vehicles. Students are also placed in other communities and an attempt is made to get them more experience with different teachers, grade levels, and class sizes to allow students to figure out what they are good at and the population they might want to serve.

Ms. Lane asked Ms. Heimarck to provide examples of the kinds of outputs being sought. One area is data on where students are placed during the school year, in what districts, and with which teachers. Data will continue to be collected for continuous improvement in the program and the two-year time period provides the opportunity to collect the data and document whether the system is working.

Ms. Chagnon asked if there were problems getting field study placement opportunities. Ms. Monico stated the biggest issue is competition with other institutions that may be able to offer transportation or other things Rivier can't provide. There is a strong relationship with school administrators and teachers and requests are being received for Rivier students because of positive past experiences.

MOTION: Ann Lane made the following motion, seconded by Kate Cassady, that the State Board of Education grant conditional program approval for two (2) years expiring on December 31, 2019, to Rivier University's Professional Preparation Programs. Within this two-year conditional approval, a full review of the institution's programs will occur prior to the December 31, 2019 expiration. Furthermore, Rivier University shall be required to submit two priority progress reports addressing findings, detailed in the January 18, 2018 report. The first progress report shall be submitted on or before September 30, 2018, the second priority progress report shall be submitted on or before March 31, 2019.

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

AGENDA ITEM V. OPEN BOARD DISCUSSIONS

It was noted that the Teacher of the Year candidates couldn't make it to today's meeting and will be at the April meeting.

Chairman Cline noted that there are still 50 minutes before the start of the first Public Hearing and will review whether or not the State Board can go into recess while waiting and suggested the recording continue during this time in order to ensure compliance with the Right to Know law.

In reference to the Teacher of the Year finalists, Ms. Chagnon invited everyone to attend a demo day on April 3 where the 24 candidates will be set up with displays and at the end of the day the committee will have to narrow the choices down to 8 finalists.

Chairman Cline called a recess. The Board will reconvene at 12:00 p.m.

AGENDA ITEM VI. LEGISLATIVE ISSUES/RULES

A. 12:00 to 12:30 PUBLIC HEARING – Special Education Aid (Ed 1128)

The Public Hearing opened at 12:00 p.m.

Bonnie Dunham of Merrimack, NH spoke on behalf of the State Advisory Committee for Education of Children with Disabilities as well as herself as a private citizen, in support of the proposed changes, saying the language change is respectful and reflects the intent of the legislation and complies with HB 517.

The Public Hearing closed at 12:30 p.m.

B. 12:30 -1:00 PUBLIC HEARING – Highly Qualified Teacher and Core Academic Subjects (Ed 1102 and Ed 1113)

The Public Hearing opened at 12:30.

Bonnie Dunham of Merrimack, NH spoke in support of the changes regarding highly qualified teachers and core academic subjects. She expressed her support for removing the definition of highly qualified teacher but asks that the State Board revise Ed 1113.12(a) rather than remove it. Her proposed revision would be that "personnel providing services to children with disabilities in public elementary and secondary schools shall meet the requirements in 34 CFR 300.156 except as provided in Ed 1113.12 (b) and (c) for paraprofessional

personnel." It is her opinion that only the reference to the definition of highly qualified teacher be kept.

The Public Hearing closed at 1:00

C. Initial Proposal – Non-Public School Approval (Ed 403.03, Ed 405.01 and Ed 407.01)

Attorney Diana Fenton introduced Jane Levesque who works on nonpublic school issues for the Department. Ms. Levesque noted that the rule has not expired and that the changes are to update outdated provisions within the rule, such as paper copy versus electronic. The substantive change relates to Ed 405.01 Recognized Agencies for Program Approval. The listing of the agencies has been removed leaving the language on how a nonpublic school becomes accredited. This will alleviate having to make changes when agencies are added or removed from the list. The approved agencies will continue to be listed on the Department website. Also, a site visit has been added as a part of the accreditation process. Other changes are editorial in nature. Due to space restrictions Ed 407.01 is a change to "electronic copy" instead of "hard copy". There is legislation in progress to make this change. Mr. Nazzaro asked if the State Board can change this in advance of the legislation changes. Attorney Fenton reassured Mr. Nazzaro that the Office of Legislative Services attorneys will ensure both are in compliance.

MOTION: Cindy Chagnon made the following motion, seconded by Kate Cassady, that the State Board of Education approve the Initial Proposal Non-Public School Approval (Ed 403.03, Ed 405.01 and Ed 407.01) and a Public Hearing be held in May.

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

D. Initial Proposal – Basic Academic Skills (Ed 513.01) Amendment to Existing Rules in Response to HB 1498

Ms. Amanda Phelps from the Bureau of Credentialing provided background information on the current proposed legislation and issues the credentialing office has identified in the event the legislation goes through. Mr. Michael Seidel, Director, Division of Higher Education – Higher Education, explained that this is an attempt to fix the problems with the legislation through a simpler rulemaking process. The intent of the legislation is to help provide alternative pathways for Career and Technical Education educators to be able to continue teaching and have the credentials; however, the proposed legislation would bypass other legislation such as educator credential suspension/revocation criminal background checks.

Chairman Cline expressed his concern at the confusion of having both legislation and the rule making in place. Mr. Seidel explained that he has been speaking with the legislators involved with the proposed bill and their hope is to have something passed as quickly as possible because there are a number of instructors currently in limbo. The legislators have seen the rewrite of the rules and agree that it meets the intent of what they are trying to do through legislation. There are a number of qualified instructors having trouble passing the praxis exams and a number of these instructors already have national or international types of licenses that qualify them. The intent is to acknowledge these licenses as part of the qualifications.

Ms. Chagnon spoke of her concerns with changes giving superintendents the ability to certify and the confusion it would create. It was explained by Ms. Phelps that the rule requires the superintendent to provide a statement of eligibility to begin the alternative pathway process with the Department providing the certification. The legislation removes the certification from the Department and gives it to the superintendent to determine if someone is qualified or not.

Ms. Cassidy questioned the use of the word "bypass" and requested clarification. Mr. Seidel explained that the language contained in the bill wasn't inclusive enough and bypasses other legislation, such as educator credential suspension/revocation and criminal background checks that are already part of the Department's processes. Mr. Seidel explained that within this rule the only deviation is that it provides an alternative pathway with additional supporting material counting towards requirements for someone to get their license.

Chairman Cline inquired about fields that do not have any type of industry certification or license such as journalists, broadcasters, and photographers and wanted to make sure barriers were not being put up for people in fields without credentials. Mr. Farr, a member of the Advisory Council on Career & Technical Education, thanked the Department for all their work on this and agreed with Chairman Cline that there are areas that have no certification or license. The Advisory Council has been looking at these areas to determine certification and make sure the certifications are rigorous enough to meet the Department's approval. They have completed approximately 90% and will complete the last 10% over the next year and acknowledged there may be some fields where alternative licensure or certification requirements may be harder to determine.

Mr. Steve Rothenberg, Director, Concord Regional Technology Center, explained that many people are making massive career changes after 20 years of experience in the field and by moving from the current teacher-prep based system to a model that is less traditional, but is reasonable with high standards, that takes into account industry experience and background will provide New Hampshire students with authentic teachers in their classrooms.

MOTION: Ann Lane made the following motion, seconded by Cindy Chagnon that the State Board of Education approve the Initial Proposal Basic Academic Skills (Ed 513.01) Amendment to Existing Rules in Response to HB 1498, and hold a Public Hearing for this rule at the April 12, 2018 State Board of Education Meeting.

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

E. Final Proposal – Specialist in Assessment of Intellectual Functioning (SAIF), (Ed 507.19 and Ed 614.08)

Ms. Amanda Phelps from the Bureau of Credentialing explained that this rule came before the State Board in December with an adoption in January. The Office of Legislative Services (OLS) found an error in the adoption of the rule. In January the Board approved adoption of the rule which was not the conditional approval with changes and the wrong rule was adopted. Corrections have been made and reviewed by OLS, the Professional Standards Board, and the Bureau of Credentialing and now has to go through OLS once more.

MOTION: Sally Griffin made the following motion, seconded by Ann Lane, that the State Board of Education approve the Final Proposal Specialist in Assessment of Intellectual Functioning (SAIF), (Ed 507.19 and Ed 614.08).

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

F. Adopt – Manifest Educational Hardship (Ed 320)

Attorney Diana Fenton explained to the Board that OLS did provide additional comments stating this rule is about striking a delicate balance and any play with wording could cause imbalance in the rule. JLCAR passed this without changes and it is now ready for a motion to adopt.

Attorney Fenton advised the State Board it has been brought to her attention that there is a party who wants changes added the rule and the party has requested the State Board process the changes as an emergency change prior to adoption. The proposal was distributed to the State Board.

Chairman Cline acknowledged receipt of the proposal and stated given the long history of this rule and not wanting to set precedent of taking rules on the fly without a thorough review by the State Board, at this time it is not a proper or advisable process to go through. The rule will go forward now as proposed and changes may be considered at a later time. Ms. Chagnon expressed her

agreement and stated this has been a yearlong process representing a collaborative effort by all stakeholders involved and has been vetted many times including by the State Board. Changes at the last minute are not a good idea.

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.

Chairman Cline thanked everyone for all the hard work that went into this very serious and emotional issue.

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.

AGENDA ITEM IX. CONSENT AGENDA

A. Meeting Minutes of February 8, 2018

MOTION: Cindy Chagnon made the following motion, seconded by Ann Lane, that the State Board of Education approve the Meeting Minutes of February 8, 2018.

VOTE: The motion was approved by vote of the Board with 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 1:05 p.m.

MOTION: Kate Cassady made the following motion, seconded by Ann Lane, 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