

Right to Know Advisory Committee
December 1, 2015
Meeting Summary

Convened 10:05 a.m., Room 448, State House, Augusta

Present:

Sen. David Burns
Rep. Kim Monaghan
Suzanne Goucher
Fred Hastings
Richard LaHaye
Mary Ann Lynch
Judy Meyer
Kelly Morgan
Harry Pringle
Linda Pistner
Helen Rankin
William Shorey

Absent:

Chris Parr
Luke Rossignol

Staff:

Natalie Haynes, Craig Nale, Henry Fouts

Introductions

Advisory Committee members introduced themselves.

Draft annual report review & vote

Staff reviewed the draft annual report with the Advisory Committee. Mr. Pringle wanted to make sure that the recommendation section of the report (and Executive Summary) regarding the Advisory Committee's recommended legislation to permit remote participation by members of public bodies be explicit that it applied only to bodies with appointed members, not elected members. Further discussion on this point elucidated that elected officials that may be appointed to serve on a public body would not disqualify that body from allowing remote participation by its members by virtue of the fact that the elected officials were not specifically elected to that body (e.g., just because some members of the Advisory Committee are elected officials, since they were appointed to their seats on the Advisory Committee, not elected, remote participation in Advisory Committee meetings would not be prohibited under this proposed legislation). Ms. Meyer asked if the Legislature should be explicitly exempted in the legislation. Mr. Pringle noted that it was hard to reign in all possibilities, to solve all potential problems, but that instead the Advisory Committee was passing along more of a template for the Judiciary Committee to work with. It was further requested that the clarification about elected members be included in the summary portion of the proposed legislation. The Committee agreed to include Mr. Pringle's suggested clarifications into the report and the summary portion of the proposed remote participation legislation.

In regard to the text of the proposed legislation, Ms. Lynch suggested edits that were discussed by the group. First, she pointed out 2 instances of an unneeded "or" at page 2, subsection 2, on the 2nd and 4th lines. Ms. Lynch also suggested changing the first line of the proposed legislation

with the following: “A public proceeding subject to this subchapter, except a proceeding of a publicly elected body, may be conducted through telephonic, video” This replaces the term “public body” with “public proceeding”, because the latter term is already defined in FOAA. The group was in agreement that all suggested drafting changes should be included in the final report.

Department of Education’s proposed amendment to 20-A MRSA §13004(2-A)

Staff reviewed the proposed amendment and the concerns previously raised by the Department of Education in its response to the standard questionnaire sent to agencies as part of the public records exceptions review. The proposed amendment is included in **Appendix E**. The Department raised its concern that information made confidential in 20-A MRSA §§6101 and 6103 is information it wants to release in §13004(2-A)(B), because allowing the Department to release this information regarding teaching licensees would allow other states to share their information regarding teachers previously licensed in those states. Staff pointed out that the exception in §6101 was much broader than the information that would be relevant to be released pursuant to §13004(2-A), and raised the potential for the Committee to specify in this confidentiality waiver only the relevant information required to be shared with other states if the breadth of released information is a countervailing concern.

Debra Plowman, Director of Policies and Programs in the Department of Education, and Assistant Attorney General Sarah Forster appeared before the Advisory Committee to explain the proposed amendment. According to Ms. Plowman and Ms. Forster, the goal of the amendment is to allow the Department to work with a national organization to share certification complaint information on Maine teachers with other jurisdictions, which would allow the Department to receive the same information about teachers coming to Maine from other jurisdictions. Ms. Forster explained that the 2-A(B) exception exempts the information that the Department actually wants to share, and that allowing the Department to share that information was the original intent of the legislation. Ms. Meyer asked what specific information the Department was looking to share. The reply was that generally the organization and other states are interested in information regarding the basis for teacher disciplinary action, including criminal history and complaints that could result in a teacher losing certification. Ms. Plowman said the idea is to make sure Maine students are safe, and to do so the State wants to know about individuals from other states coming here to teach our children and that allowing Maine to release its teacher discipline information is the way to allow this information sharing.

On a motion by Mr. Pringle, seconded by Ms. Lynch, the Committee debated the idea of including a recommendation on amending the education statutes in the Committee’s report. Mr. Pringle noted that this provision was confusing, and the proposed amendment was a bit of a blunderbuss, for example, it would allow the release of emotional disturbance information of a certified teacher’s family member. Mr. Pringle also asked whether and how the confidentiality of information released could be maintained once released outside the Department of Education under the proposed exception.

Senator Burns and members of the Advisory Committee discussed how the issue underlying this proposed amendment is that current law prohibits the Department of Education from sharing this information with the public (e.g., parents) or a school district within the State that might want to hire the concerned teacher, but under this amendment would allow this information to be shared with other states or a national organization. The Advisory Committee further discussed whether it is outside the Committee’s purview to address the larger policy issues surrounding the selective confidentiality of this information. The Advisory Committee debated whether to refer the issue

to the Education and Cultural Affairs Committee of the Legislature for a more comprehensive solution rather than making a recommendation to address part of the issue. Ms. Meyer suggested that a final solution from the Education and Cultural Affairs Committee could specify information that may be shared to accomplish the goals discussed, rather than specifying what information cannot be shared. The Committee decided not to include a recommendation in its report at this time.

The Committee voted 11-0 to send a letter to the Education and Cultural Affairs Committee alerting them to the issues that came up in the Advisory Committee's review of the confidentiality exception in 20-A MRSA §13004(2-A), and specifically the following concerns regarding the existing exception and the proposed amendment: whether the amount and scope of information potentially released is appropriate; whether there should be limits on re-dissemination once released by the Department; whether the information should also be permitted to be shared within the State, not just among other states; and whether the statutes should be revised to state what may be shared, rather than what cannot be shared. The letter from the Advisory Committee to the Education and Cultural Affairs Committee is included in **Appendix E**.

The Committee voted 11-0 to endorse the draft report, with the previously discussed additions, amendments and updated information.

The meeting was adjourned at 11:34 a.m.