

MINUTES
Approved by the Committee
Education Working Group
Thursday, July 30, 2020
1:30 P.M.
Room EW42
Boise, Idaho

Co-chair Clow called the meeting to order at 1:30 p.m.; a silent roll call was taken.

Members in attendance: Co-chairs Lance Clow and Dean Mortimer; Senators Steven Thayn, Chuck Winder, Carl Crabtree, Jim Woodward, Dave Lent, Cherie Buckner-Webb, and Janie Ward-Engelking; Representatives Ryan Kerby, Paul Shepherd, Judy Boyle, Ron Mendive, Gayann DeMordaunt, Dorothy Moon, Barbara Ehardt, Bill Goesling, Gary Marshall, Jerald Raymond, Tony Wisniewski, John McCrostie, Chris Abernathy, and Steve Berch. Legislative Services Office (LSO) staff present: Elizabeth Bowen, Shelley Sheridan, Soren Jacobsen, and Jennifer Kish.

Other attendees: House Representative Greg Chaney, Greg Wilson, Office of the Governor; Carrie Maulin, Chief Clerk of the House; Jared Tatro, LSO; Karen Echeverria, Idaho School Boards Association; Tim Hill, Marilyn Whitney, Karen Seay, and Derek Newland, State Department of Education; Tracie Bent, Mike Keckler, and Matt Freeman, State Board of Education.

Co-chairs Mortimer and Clow welcomed the joint committee and provided guidelines for conducting the meeting.

Remarks on COVID-19, CARES Act Funding, and Education

Greg Wilson, Senior Policy Advisor for Education, Office of the Governor, reported on the Governor's actions over the past four and a half months. He stated that an emergency K-12 council was convened to provide feedback on critical policy changes. The council would remain active through the next school year. Mr. Wilson reported that the biggest challenge was the K-12 budget, and that due to the negative revenue forecast, the Governor issued a 1% holdback in 2020 and 5% reduction in 2021 to the K-12 budget. The reduction to the budget was developed to purposely align with federal funds, and an executive order was issued to freeze spending authority of 5% for fiscal year 2021. He added that the reductions would require legislative action.

Mr. Wilson reported on the CARES Act funding for schools and how it was allocated. He stated that \$122 million was received with \$43.1 million going to public schools based on Title I populations, \$21 million for COVID-19 testing school staff, \$10 million for additional masks, plexiglass, gloves, and sanitizer, in addition to the \$4 million requested by the Department of Education for personal protective equipment and costs associated with online learning, \$33.8 million to support blended learning, \$3.2 million to the Idaho Digital Learning Academy, \$1 million for remote student mental health support, and the remaining \$6 million for additional K-12 initiatives. Mr. Wilson stated that two additional committees were created to work on closing the digital divide. Mr. Wilson stated that the Governor's expectation was for schools to plan for various scenarios so that instruction could be provided to all students and that he was concerned with the gap in achievement and learning.

Co-chair Clow asked if the money was all from CARES funding and if it had to be expended by the end of 2020. Mr. Wilson confirmed that the money was all CARES Act funding and that some buckets of money were on different timelines for spending. Representative Moon asked for a copy of Mr. Wilson's presentation of the distribution of funds. She asked, of the \$21 million allocated for testing, how many people would be tested and what was the cost per test. Mr. Wilson responded that he would provide the funding distribution list to the group and that the Department of Health and Welfare estimated the tests at \$100 per test with 43,000 staff members.

Liability Protection for Schools and Discussion

Representative Greg Chaney reported that the Judiciary and Rules Working Group met and was recommending [draft legislation](#) and a special session for the purposes of adopting liability reform. He stated that the legislation was drafted to tie to the declaration of an emergency and could extend to anything that was emergent. Representative Chaney stated that the legislative intent was to provide an appropriate response to COVID-19 and includes threshold provisions and sideboards for compliance with the law. Senator Winder asked if the Judiciary and Rules Working Group made its recommendation directly to the Governor. Co-chair Clow added that recommendations by the working groups should be presented to leadership, not the Governor. Representative Chaney clarified that the group had not communicated with leadership yet. Representative Moon asked who would determine noncompliance. Representative Chaney stated that it would be the responsibility of the person suing to prove or disprove the facts and that the lawsuits would not be reviewed by any governmental agency. Representative Boyle asked if the legislation applied to any emergency. Representative Chaney confirmed that it would but only if the behavior complained of was in direct response to that specific emergency. Representative Boyle stated that the language was too broad and asked if it should focus on communicable diseases. Representative Chaney responded that the legislation related to the emergency that was declared. Co-chair Clow reminded the group that the working groups' mission was to determine if a special session was needed and to recommend topics and that recommended legislation were drafts that could be modified during session.

Presentations and Discussion

Karen Echeverria, Idaho School Boards Association (ISBA), stated that the ISBA was recommending legislation to address line item flexibility, use it or lose it, and the maintenance match. The ISBA also supported the liability legislation passed by the Judiciary and Rules Working Group. Ms. Echeverria reported that the Idaho Association of School Administrators (IASA) supported removing the decision making authority from the health districts and leaving it up to the school districts; however, the ISBA's position on the matter had not been decided. She noted that health districts were providing differing requirements and recommended consistency. Ms. Echeverria stated that the IASA supported removal of their own responsibility to close school districts; however, the ISBA had not taken a position. Co-chair Clow asked if the ISBA had the means to make policy recommendations. Ms. Echeverria responded that its Governmental Affairs Committee could meet to make a recommendation.

Co-chair Clow asked Jared Tatro, Principal Budget & Policy Analyst, Legislative Services Office (LSO), how the Legislature could address topics such as flexibility and line items. Mr. Tatro responded that the Legislature could address issues by modifying statute or through an appropriation bill. Senator Lent asked if plant facility levies could be changed. Mr. Tatro responded that current code would make that determination. Senator Lent requested feedback from the ISBA regarding responsibilities of the school boards versus health districts. Ms. Echeverria responded that she would survey the ISBA and report to the group. Co-chair Mortimer asked Mr. Tatro to confirm that school districts were responsible to expend what was set in statute, regardless of what was appropriated. Mr. Tatro confirmed that the Governor did not have the authority to modify statute, that the Board of Examiners could only reduce appropriation amounts, and that the Legislature would have to change Idaho Code. He stated that the Board of Examiners only reduced the appropriation for public schools and that other agencies were in a holding pattern. The Legislature would have to decide if it agreed with the Governor and make changes permanent or authorize the changes for one year. Co-chair Mortimer asked how critical it was to have flexibility now versus in January. Ms. Echeverria replied that the ISBA would need to know now because more than half of the funds would be expended by January and that flexibility would allow them to move money around over those line items. Co-chair Mortimer asked and Ms. Echeverria confirmed that the ISBA had to adhere to the statute until the Legislature acted.

Co-chair Clow commented that the group drafted legislation to address flexibility and asked if specific changes in statute would be required. Mr. Tatro confirmed that it was the Legislature's

prerogative to determine how leadership premiums were distributed by modifying code or through the appropriation process. He cautioned that once in code, it could be difficult to remove.

Representative Ehardt asked if school districts' distributions and budgets were already being reduced. Tim Hill, State Department of Education (SDE), responded that the SDE directed school districts to budget according to the Governor's 5% plan with the understanding that further planning would be necessary. He suggested using "notwithstanding" language in bills to put a statute on hold without amending it. Co-chair Mortimer asked if the SDE's August distributions were a general distribution and not specific in nature. Mr. Hill confirmed that the August distribution was an advance payment and a cash flow issuance.

Tracie Bent, State Board of Education (SBE), reported on issues identified by school districts, which included funding based on enrollment versus average daily attendance (ADA), funding flexibility, transportation funding, technology needs, and blended learning. Ms. Bent stated that attendance concerns could be addressed through rule making, which would allow districts to use enrollment reporting. If accepted by the Legislature, the rule making would be in affect through the school year. The increase in cost would be approximately \$8 million dollars. Ms. Bent stated that the department was working with the Governor's office to identify specific areas needing flexibility and that federal funding could backfill those expenses. She stated that salary based apportionment, leadership premiums, and increase of minimum salary of staff would require statutory changes and that without legislative action, there would not be enough funding to pay for the funding formula that was currently in statute. Ms. Bent reported that transportation and reimbursable mileage was a complex issue and best solved through a statute change. She stated that connectivity in low income and rural areas had impacted blended learning and that technology needs and professional development were also needed.

Representative Kerby asked for clarification on the amounts of ADA versus enrollment. Mr. Hill responded that enrollment was a count of noses and that kindergartners were incorrectly counted as 1 with an actual ADA of .5, which was fairly significant and not considered in 2017. He added that enrollment was inflated by students enrolled in charter programs and took into consideration part-time students. Mr. Hill reported that the estimate of 97% attendance was understated because enrollment was overstated. He noted that the analysis was looking backward and that growth needed to be considered going forward. Mr. Hill stated that policy makers would need to decide if the table of divisors needed to be modified to neutralize the affect of the revenues and continued by reviewing the [computation of support units](#). Representative Kerby expressed concern with the difference in the costs to change from ADA to enrollment and that it was not consistent with past funding formula discussions. Mr. Hill responded that three years ago, only an enrollment number was known, which was inflated by an unknown amount. He stated that it was now known that it was inflated by variables like kindergarten versus half-day ADA, students enrolled in multiple programs, and half-day attendance. Mr. Hill stated that the data was only as good as the data available and that last year's data strongly suggested that earlier numbers were incorrect. He added that the numbers were not exact but were in the ballpark.

Representative Ehardt asked how rules could be made without law. Ms. Bent responded that statute states that the SBE would determine how school districts report ADA in rule. Representative Ehardt asked why the Legislature considered a new formula if the SBE already had the authority to do it in rule making. Co-chair Clow responded that the attempt to change the formula included more than enrollment. Ms. Bent agreed and stated that the question was how to change the reporting used in the existing formula. Co-chair Mortimer asked if the topic of enrollment versus attendance needed to be addressed in a special session or could wait for January. Ms. Bent responded that a temporary rule could be done with a proposed rule in January and that using enrollment reporting was not dissimilar to what had been done to determine ADA for virtual schools. She stated that public school funding would need to be addressed by the Legislature. Co-chair Mortimer expressed concern that the Public Education Stabilization Fund (PESF) balance could be hurt for the next

school year if issues were not resolved soon. He asked for confirmation of the \$30 million hit to PESF. Mr. Hill replied that it was \$25+ million.

Representative Goesling asked how higher education institutions were meeting funding and liability issues. Ms. Bent responded that secondary institutions share the public schools concerns on liability and would support help by the Legislature, and personnel cuts and elimination of programs have been done to meet holdbacks. Representative Goesling asked if budgets of campus with significant on-campus presence and now facing no students would be impacted. Ms. Bent responded that the impact would be anticipating overall attendance. Senator Ward-Engelking stated that dealing with enrollment in rule would be important.

Co-chair Clow requested stakeholders state which topics could be addressed in rule versus by legislative action. Ms. Bent responded that freezing movement on the career ladder, suspending leadership premiums, flexibility, use of lottery funds, changes to use it or lose it, maintenance match, and transportation funding would require legislative action. Some transportation issues and ADA could be addressed through rule making. Representative DeMordaunt asked if a decision of legislation versus rule making could be made in today's meeting to address funding issues. Ms. Bent responded that it would depend on whether a special session was called and that the board may want to implement some processes for the beginning of the school year if not addressed until January. She added that a rule could always be vacated. Representative DeMordaunt asked if hourly requirements were eliminated to build in flexibility in the enrollment model. Mr. Hill responded that it was not addressed and that waiver provisions remain in statute. Representative DeMordaunt clarified that the group was to consider legislation and a special session, not rule making. Co-chair Clow agreed. Senator Thayne commented that the potential rule was based on minutes per week, which sounds like attendance not enrollment. Mr. Hill responded that the minutes per week was a measurement of course load for the week and not attendance.

Marilyn Whitney, State Department of Education (SDE) agreed with Ms. Bent and added that the SDE had been working on ways to support blended learning and meet sanitization and PPE concerns. She stated that the Legislature would likely have to address attendance for funding and that maximum flexibility was important. Derek Newland, SDE, reviewed a presentation on [student transportation](#). Senator Ward-Engelking asked if districts could share busses and drivers. Mr. Newland confirmed that it was possible, but that the issue would be who was responsible for paying the driver and reimbursable mileage. Karen Seay, State Department of Education (SDE), referenced information on [CARES ACT funding](#) and noted that the performance period for the emergency relief fund was March 13 to September 30, 2022.

Votes

Co-chair Mortimer moved to approve the Education Work Group meeting minutes of July 21, 2020, seconded by Representative Goesling. The motion passed by voice vote.

Co-chair Mortimer moved that the Education Working Group recommend an extraordinary session to the House and Senate Leadership, convened by the Governor, to consider education topics subject to discussion and to be determined by the working group, seconded by Representative DeMordaunt. The motion passed by roll call vote: House 14 Ayes, 0 Nays, 1 Absent; Senate 7 Ayes, 1 Nay; 1 Absent.

Senator Winder supported the motion and recommended the group specify topics for the special session. Representative McCrostie supported a special session and recommended that the legislation reflect topics that needed to be addressed in a special session versus in January.

Co-chair Clow referenced seven drafts of legislation addressing topics such as use it or lose it, flexibility in line items, maintenance match, school closure authority, lottery funds flexibility, transportation, and closure of higher education institutions. Representative DeMordaunt supported the motion and stated that it was the group's duty to request a special session to address education

issues and that those issues be addressed in legislation, not rule. Senator Ward Engelking asked if some of the issues could be addressed through JFAC and the appropriation process. Co-chair Clow responded that the legislation would be assigned accordingly to the committees by leadership. Co-chair Mortimer reminded the group of the importance of the differences between policy and funding. Senator Buckner Webb supported a special session to provide guidance to parents and students.

Representative Kerby reviewed [drafts of legislation](#) addressing spending flexibility. Representative McCrostie recommended adding sunset clauses. Representative Boyle suggested the group recommend topics, not legislation. Co-chair Mortimer agreed and recommended the group focus its discussion on topics to recommend to leadership. Elizabeth Bowen, LSO Drafting Attorney, clarified that changes could be made in code or through the appropriation process; however, permanent changes would require changes in code. She added that the liability issue was not part of the Education group's charge and recommended it remain in the Judiciary and Rules Working Group. Representative Boyle referenced the Governor's letter charging the group with addressing education-related matters and deciding if a special session was needed. Co-chair Clow noted that providing flexibility had merit and that drafts 07, 08, 09, and 016 would address that. Senator Ward-Engelking supported providing schools with flexibility and adding sunset clauses. Senator Thayn suggested a motion that would include topics. Representative Marshall recommended flexibility as a topic in addition to critical topics such as ADA versus enrollment and transportation. Representative DeMordaunt opposed a motion recommending legislation and stated that the motion was not an endorsement of any draft.

Representative Kerby moved that the Education working group recommend consideration of bills relating to school transportation, spending flexibility, school closure authority, and ADA versus enrollment, seconded by Representative Marshall. The motion passed by roll call vote: Senate 6 Ayes, 1 Nay, 2 Absent; House 13 Ayes, 0 Nays, 2 Absent.

Co-chair Mortimer stated that higher education stakeholders indicated that trustees may need the authority to make opening and closure decisions. Representative Kerby stated that draft legislation 013 provided that higher education institutions would set up a plan themselves, not the health districts, and would work in conjunction with the SBE. Co-chair Clow stated that higher education was not a charge of the Education Working Group, but would entertain a motion to include that. Senator Winder stated that higher education could be recommended by the group if deemed critical. Co-chair Mortimer requested the minutes reflect that the intent was to address closure, opening, district seven health, or other appropriate authority.

Senator Winder moved that even though the working group was not charged with higher education issues, the working group recommends to leadership that school closure and management of the spread of contagious or infectious disease in higher education institutions should be a consideration in a special session, seconded by Co-chair Mortimer. Representative Wisniewski suggested striking "even though the working group was not charged with higher education issues." Representative DeMordaunt recommended clarifying who was making opening or closing decisions. Ms. Bowen recommended the motion state that the working group recommend consideration of who has the authority to close college and university campuses and require other measures to prevent the spread of infectious diseases. She noted that the group's final report could include that language instead of it being in a motion. Senator Winder preferred the motion include the statement that even though the working group was not charged with higher education issues. **The motion passed by roll call vote: House 12 Ayes, 0 Nays, 3 Absent; Senate 6 Ayes, 1 Nay, 2 Absent.**

Co-chair Mortimer recommended the group adjourn pending call of the chair. Ms. Bowen confirmed that the group would need to vote on the final report of recommendations to leadership; however, that could be done by buck slip.

There being no further business, the working group was adjourned at 5:14 p.m.