

**MINUTES**  
**Approved by the Committee**  
**Education Working Group**  
**Monday, August 10, 2020**  
**9:00 A.M.**  
**EW42 (Remote Electronic Meeting Only)**  
**Boise, Idaho**

Co-chair Mortimer called the meeting to order at 9:10 a.m.; a silent roll call was taken.

Members in attendance: Co chairs Dean Mortimer and Lance Clow; Senators Steven Thayne, Chuck Winder, Lori Den Hartog, Carl Crabtree, Jim Woodward, Dave Lent, Cherie Buckner-Webb, and Janie Ward-Engelking; Representatives Ryan Kerby, 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. Absent and excused: Representative Paul Shepherd. Legislative Services Office (LSO) staff present: Elizabeth Bowen, Shelley Sheridan, Soren Jacobsen, and Ana Lara.

Other attendees: Marilyn Whitney and Tim Hill, State Department of Education; Debbie Critchfield, Tracie Bent, and Matt Freeman, State Board of Education; Quinn Perry and Karen Echeverria, Idaho School Boards Association; and Andrew Grover, Idaho Association of School Administrators.

Co-chairs Mortimer and Clow welcomed the joint committee and provided guidelines for conducting the meeting. Co-chair Mortimer reminded the group that they would be voting on draft legislation and whether to recommend the drafts to leadership to be considered in the special session or if the legislation could wait for the 2021 session. Co-chair Clow restated the working groups charge.

### **Review of Draft Legislation**

Representative Kerby reviewed [draft legislation 009](#) addressing the governance of school closures. Representative Kerby stated that three of the seven health districts were visited and two supported the legislation and that their role in school closures should be more of an advisory role. He stated that elected school board members were given the duty to govern schools and that there needed to be consistency. Senator DenHartog asked why other entities were listed in addition to the school board. Representative Kerby responded that health districts were included to enable them to close quickly in case of an emergency that could not wait for a school board meeting. Co-chair Mortimer asked if the language recommended by the Attorney General's Office negated the language giving authority to the school boards. Representative Kerby responded that the recommended language states that school boards could not be charged with a violation for not following the recommendation. Representative Ehardt recommended removing the emergency clause for the health districts. Representative Marshall asked why Idaho Code Section 33-512 was referenced. Representative Kerby responded that the school boards' authority resides in Idaho Code 33-512. Representative Boyle recommended striking language allowing health districts to close in an emergency. Representative Goesling recommended keeping the language to provide for when board members were not able to meet. Senator Winder recommended adding a sunset. Representative Kerby preferred not to add a sunset. Senator Lent supported the draft legislation as written. Representative Berch expressed concern with the legislation, recommended trusting those with medical expertise, and supported adding a sunset. Co-chair Mortimer clarified that the drafts of legislation were recommendations only and would be thoroughly vetted during the session.

**Representative Kerby moved that the Education Working Group recommends that DREL009 be forwarded in RS form to House and Senate leadership for consideration in the special session, seconded by Senator Lent.** Senator Thayne supported the motion.

**Representative Boyle made a substitute motion that the Education Working Group recommends that DREL009, with the exception of lines 46 and 47 on page 4, be forwarded in RS form to House and Senate leadership for consideration in the special session, seconded by Senator Den Hartog.**

Representative Berch stated that people educated in their fields should be valued and respected and that it was not sacrificing individual liberty but balancing the governance process with protecting the larger community. Representative Ehardt stated that the legislation was important and expressed her support. She stated that school boards were engaged and have students' best interest. Senator Thayn expressed concern with the ability to quarantine everyone, even those who were not sick. Representative Kerby noted that superintendents had the authority to close schools immediately in the event of an emergency. Senator Winder stated that adding a sunset would allow a more thorough discussion at a later date and recommended prioritizing and consolidating legislation. Co-chair Clow supported the substitute motion and commented that schools would be reopening soon and needed something in place. Senator Crabtree asked if the draft legislation was an emergency or could it wait until January. He cautioned of recommending too many bills for the special session. Representative Ehardt expressed the importance of the legislation to allow students to return to school and normalcy. Senator Winder asked if the legislation could be combined into one or two RSs. Elizabeth Bowen, LSO Drafting Attorney, confirmed that draft legislation could be combined. Co-chair Mortimer suggested combining related topics. Senator Thayn agreed that the draft legislation was critical to bring stability and allow districts to make decisions. He stated that some students would not return if masks were required. Senator Ward-Engelking recommended prioritizing topics. Co-chair Clow recommended the group vote on each draft then group together by topic. Co-chair Mortimer stated that parents have asked why health districts were making decisions for the school boards and that the avenues of communication to the school boards and health districts were not the same. He stated that it was important to address now. Representative Kerby noted support from school administrators and their ability to govern and that Health District 1 warned that if not addressed now, there would be a mess in the fall. Senator Woodward noted that there were no concerns in his district and what the draft legislation proposed was already in place. Representative Kerby responded that not all districts had issues. **The substitute motion passed by roll call vote: House 11 Aye, 3 Nay, 1 Absent; Senate 5 Aye, 4 Nay.**

Representative Kerby reviewed [draft legislation 015](#) addressing higher education and community colleges' authority to close. Representative Berch asked why draft 015 gave authority to appointed positions and not elected as done in draft 009. Representative Kerby responded that the constitution provided the authority for higher education and would not change. Co-chair Clow added that draft 015 would not put one board over the other. Co-chair Mortimer asked if stakeholders felt that legislation was important. Representative Kerby responded that the state board provided the draft language and that one board member felt the legislation was extremely important, that it was far reaching, and that the ability to provide nuances in some areas was needed. Senator Crabtree asked if it was expected that all drafts recommended by the group would be heard in the special session. Representative Kerby responded that he was confident they would be heard.

**Representative Kerby moved that the Education Working Group recommends that DREL015 be forwarded in RS form to House and Senate leadership for consideration in the special session, seconded by Senator Thayn. The motion passed by roll call vote: Senate 7 Aye, 2 Nay; House 13 Aye, 1 Nay, 1 Absent.**

Representative Kerby reviewed [draft legislation 004](#) addressing the maintenance match. Representative Kerby noted the three drafts of legislation that addressed spending authority and that the group could vote to add language specifying school year 2021 to make it permanent. He stated that draft 004 provided flexibility, would allow districts to perform maintenance, and would not freeze up money that could otherwise be used in general funds during a holdback and provides flexibility. Representative Marshall asked if legislation was needed since federal money was available. Representative Kerby responded that CARES funds covered COVID-19 related matters and would not

help with the 5% holdback. Representative DeMordaunt noted that the funds could be used for abating hazards and asked if that was considered. She expressed reluctance for the draft legislation due to the previous lawsuit against the state and recommended adding a sunset or limiting it to the 2021 school year. Representative Kerby responded that school districts would continue to do maintenance and that building codes and requirements would not change. Senator DenHartog asked why the draft legislation was needed now. Representative Kerby responded that the school boards association felt that legislation was needed now to begin the school year and to plan for future funding. Representative McCrostie asked what the remedies were when funding was dealt with during the recession. Representative Kerby responded that changes were made in statute and through the appropriation process. He agreed with specifying the 2021 school year and stated that it should go through the germane committees. Representative McCrostie recommended specifying the 2021 school year. Co-chair Mortimer asked if there was a holdback specifically in maintenance funds and if districts should be obligated to contribute if the state continued to. He asked if the 5% holdback included lottery funds, and what the average reserves were in the districts. Quinn Perry, Idaho School Boards Association, responded that the Idaho Education News recently reported related information and that the total reserves in total were approximately \$323 million. Co-chair Mortimer asked what the percentage was. Senator Thayne questioned the Board of Examiners' authority to change line items and that legislation would be needed. Co-chair Mortimer agreed and that the question was if the Board of Examiners could do line items and what it included. Senator Winder noted the language stating that the state would not provide school maintenance match funds and asked if striking lines 21-22 on page three would solve the legal concern. He also asked if the state continued to contribute, would it avoid a lawsuit. Co-chair Mortimer asked if the intent was to exclude the maintenance match. Mr. Tatro responded that maintenance funds were not reduced by the Board of Examiners in the children's division and that House Bill 630 dealt with facilities funding. Representative Kerby stated that the intent of draft 004 was to provide school districts with flexibility in dealing with the 5% holdback.

**Representative Kerby moved that the Education Working Group recommends that DREL004, adding that it be applicable to the 2021 school year and removing lines 21 and 22, be forwarded in RS form to House and Senate leadership for consideration in the special session, seconded by Representative McCrostie. The motion failed by roll call vote: House 6 Aye, 7 Nay, 2 Absent; no Senate vote taken.**

Representative Kerby reviewed [draft legislation 005](#) addressing the distribution of lottery funds and providing school districts flexibility to get through the 5% holdback. Co-chair Mortimer asked if the districts had to use the funds specifically for buildings. Representative Kerby confirmed that funds were to be used for maintenance and anything for purposes for which bonds were levied. Draft 005 provided flexibility for districts to get through the 5% holdback. Senator Winder suggested clarifying what other purposes the funds could be used for. Representative McCrostie suggested specifying for the 2021 school year. Co-chair Clow stated that draft 005 was in response to a holdback of previously approved appropriations by the Legislature and would be triggered if the Legislature was adjourned and the Governor requested reduced spending by 3% or more. Co-chair Mortimer asked how much lottery funds were in the budget. Senator Den Hartog commented that, as reported by Tim Hill, all districts currently had the flexibility and agreed with specifying school year 2021. Representative DeMordaunt commented that the group was deciding on large policy issues that should be considered in a full hearing in a regular session. Senator Ward-Engelking stated that CARES money would not meet all needs and supported providing school districts with as much flexibility as possible. Senator Thayne stated that school districts could still change budgets if the Legislature acted now and that draft 005 applied only to the 2021 school year. Co-chair Clow stated that schools districts needed direction now and that the Legislature could readdress the issue in January. Representative Kerby added that Ms. Whitney reported that the balance in the lottery fund was \$24 million, 1% of the \$2 billion appropriated. Senator Winder asked if school districts already had flexibility in spending lottery money. Julie Oberle, Idaho Department of Education, responded

that lottery money must be used on repairs and maintenance. Mr. Tatro stated that the fiscal year 2020 lottery payment was \$22.8 million and through the appropriation process, \$15 million for bond levies and facilities and \$4 million in children for specified purposes.

**Representative Kerby moved that the Education Working Group recommends that DREL005, adding that it be applicable to the 2021 school year and "for any purpose allowed for discretionary funds under Idaho Code," be forwarded in RS form to the House and Senate leadership and Governor for consideration in the special session, seconded by Senator Thayn. The motion passed by roll call vote: Senate 8 Aye, 1 Nay; House 14 Aye, 0 Nay, 1 Absent.**

Representative Kerby reviewed [draft legislation 001](#) addressing use it or lose it and provided that districts could employ 15 percent fewer positions without losing funding. Draft 001 would allow more flexibility to try different models and that larger class sizes could work in some models. Senator Ward-Engelking expressed concern with larger class sizes. Representative Marshall commented that draft 005 was bad policy and recommended leaving the percentage at 9.5%. Senator Winder agreed and discouraged incentivizing fewer teachers. Representative DeMordaunt opposed larger class sizes when there were already challenges to delivering education and that students were more vulnerable now. Representative DeMordaunt requested a breakdown of where the CARES money was going and how those funds could be used to mitigate challenges. Senator DenHartog stated that having teachers teach both online and in class was too much and agreed that draft 001 could incentivize fewer teachers. Representative McCrostie expressed the need for smaller class sizes. Senator Thayn supported providing schools with flexibility and stated that draft 001 allowed districts to craft programs as needed. He recommended adding that it applied to the 2021 school year. Co-chair Clow stated that the flexibility in charter schools worked well and was needed to pay for buildings. Co-chair Mortimer asked how school districts could cut their budgets without having flexibility. Representative Berch expressed concern with forcing districts into action when money was available in the rainy day fund. Representative Marshall stated that draft 001 was out of the realm of what should be done in a special session.

**Representative Kerby moved that the Education Working Group recommends that DREL001, leaving flexibility at 9.5 percent, be forwarded in RS form to the House and Senate leadership and Governor for consideration in the special session, seconded by Senator Thayn. The motion failed by roll call vote: House 2 Aye, 12 Nay, 1 Absent; no Senate vote taken.**

Representative Kerby reviewed [draft legislation 003](#) addressing flexibility for line items supported by state funds. Representative Berch asked why draft 003 included literacy intervention. Representative Kerby responded that it was to allow flexibility and that a motion could include or exclude any items. **Representative Kerby moved that the Education Working Group recommends that DREL003, adding that it be applicable to the 2021 school year, be forwarded in RS form to the House and Senate leadership and the Governor for consideration in the special session, seconded by Senator Lent.** Senator Ward-Engelking supported the motion and asked if the Governor's Office was consulted. Representative Kerby responded that the need for flexibility was discussed; however, draft 003 specifically was not. He expected 003 would be discussed in the special session if approved by the group. Representative DeMordaunt asked how items listed in draft 003 have changed due to COVID. Representative Kerby responded that draft 003 provided flexibility in the dollar amounts for those line items. Senator DenHartog stated that there was inherent flexibility already and asked, if money was used for additional salaries, would it have a long-term impact on future salary negotiations. Representative Kerby responded that draft salary negotiations were over for the year and that draft 003 applied to the 2021 school year. Co-chair Clow supported the motion and stated that draft 003 would not reduce money for the line items, but would provide flexibility. Representative McCrostie expressed concern with the nine weeks lost last year, particularly as it related to literacy, and recommended striking literacy language. **Representative McCrostie made a substitute motion that the Education Working Group recommends that DREL003, adding that it apply to the 2021 school year and excluding line 14 on page 6, be forwarded in RS form to**

**the House and Senate leadership and the Governor for consideration in the special session, seconded by Senator Ward-Engelking.** Representative Ehardt thought school districts already had flexibility and was concerned that information about literacy funding was previously requested but was never received. Co-chair Mortimer asked if literacy dollars were reduced in the Governor's holdback and expressed concern that evaluating and assessing validity of line items would be difficult if funding was reduced. Mr. Tatro responded that JFAC did not restrict literacy funding. Co-chair Mortimer asked if the holdback would affect literacy dollars. Mr. Tatro responded that the Governor's reductions did not include literacy. Senator Thayn supported the substitute motion and noted that there should not be confusion with the desire for local trustees to follow the law and the inability of the Legislature to get the needed data. Representative Boyle asked if technology was the only line item included in the Governor's holdback and if CARES funding would cover any of the items listed in draft 003. Mr. Tatro read the list of items included in the Governor's holdback and provided the group a report on CARES funding. Co-chair Mortimer noted that discussions were still taking place regarding ways of meeting the 5% holdback and whether that could be done on a line item basis. Representative DeMordaunt asked what restrictions were in place for the \$43 million in federal funding. Mr. Tatro responded that he would report back to the group. Representative DeMordaunt asked for confirmation that the information did in fact exist. Co-chair Mortimer replied that there were specific restrictions on when and how it should be used. Representative DeMordaunt welcomed additional information from the Department of Education. Ms. Whitney responded that uses for the funding would be provided to the group. She added that there was a fair amount of flexibility and that the restrictions were that items must be specific to COVID-19 and must be spent by the end of the calendar year. **The substitute motion passed by voice vote: Senate 7 Aye, 1 Nay, 1 Absent; House 9 Aye 5 Nay, 1 Absent.**

Co-chair Mortimer recommended the group adjourn for the day and convene on August 13 to allow the group time to review drafts of legislation. **Senator Winder moved for unanimous consent to consolidate draft legislation to subject matter and approval of co-chairs, at Legislative Services' discretion, into one RS, seconded by Senator Crabtree. The consent request was so ordered.**

There being no further business, the working group was adjourned at 1:13 p.m.