

MINUTES

February 16, 2007

Minutes of the special legislative meeting of the State Board of Education held February 16, 2007, at the State Office of Education, 250 East 500 South, Salt Lake City, Utah. Meeting commenced at 10:15 a.m. Member Tom Gregory, Vice Chairman of the Law and Policy Committee presided at the meeting.

Members present were:

Chairman Kim R. Burningham
Vice Chairman Janet A. Cannon
Member Dixie L. Allen
Member Laurel Brown
Member Mark Cluff
Member Bill Colbert
Member Thomas Gregory
Member Michael G. Jensen
Member Randall Mackey
Member Denis R. Morrill
Member Teresa L. Theurer

Members Dixie L. Allen and Teresa L. Theurer participated via Poly Com. Members Haws, Cyndee Miya, Richard Moss, Josh Reid, Debra G. Roberts, Richard Sadler, and Marlon O. Snow were excused.

Also present were:

Superintendent Patti Harrington
Deputy Superintendent Ray Timothy
Associate Superintendent Myron Cottam
Associate Superintendent Patrick Ogden
Coordinator, Government and Legislative Relations, Carol B. Lear
Board Secretary Twila B. Affleck

Electronic High School/Virtual Charter School/Utah K-8 Online

Deputy Superintendent Ray Timothy updated the Board on the proposed legislation. He noted that staff has been working with Representative Ferry on this issue. This replicates what Davis, Alpine and Washington Districts have done, offering a K-8 curriculum electronically. He noted that most of the students are home schooled, private schools or concurrent enrollment elementary middle school aged students.

Dr. Timothy further reported that the initial focus of the Electronic High School was to get it up and running and have it in place and be successful – we are there. Once that was accomplished the next step was to make a similar type of schooling available for middle-school aged students. We have not done this because we have not had the funding to do so. Following that we planned to focus on the elementary level.

HB 169 has now come out from Representative Urquhart requiring the State Board and State Charter

School Board to establish a virtual charter school to supercede any of the time lines and have it open this next fall. He noted that there is apparently a company that wants to do this.

Dr. Timothy reported that we are already in process in talking with Davis District who wants to get out of the business. They have a good program and a great curriculum. We would take that program and expand it for all students statewide. We have been negotiating with Davis to try to secure the funding to try to expand the Electronic High School and have it become a K-8 program, called Utah K-8 on Line. We are working to try to use the wpu to cover those costs and expand it for all students statewide. If this becomes a charter school it will have an enrollment cap of 2,000 students through this bill. If it is an expansion of the Electronic High School we can offer it statewide to all students.

Superintendent Harrington commented that we would want this bill to say a virtual school required of the State Office. We think we could roll that out by the fall of this year. Any charter school should go through the State Charter School Board and their regulations as opposed to having legislation that says the state will begin to move in this direction.

Following questions for clarification and some discussion, motion was made by Member Mark Cluff and seconded by Member Bill Colbert to take a position of opposition to HB 169 with the comments that the State Board of Education and State Office of Education will continue to create a Utah K-8 on line whatever that entails. Motion carried with Members Allen, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill, and Theurer voting in favor; Member Brown absent.

Board Legislative Positions

HB 164 - Charter School Amendments

Member Tom Gregory reported that this bill places final charter school approval with the legislature; removes the Boards ability to approve appeals of denied charter schools; authorizes the imposition of fees by districts to students transferring between district schools and charter schools, including students at the elementary level despite the prohibition of elementary level fees in the State Constitution, as well as many other concerns.

Deputy Superintendent Ray Timothy noted that the sponsor wanted to have a beginning point from which to talk. They have asked us to list concerns and they are going to rework this bill over the weekend.

Dr. Timothy suggested a recommendation of study or watch. Then we can dialogue of the things we would like to see changed.

Motion was made by Member Bill Colbert and seconded by Member Denis R. Morrill to take a position of watch on HB 164.

Member Mark Cluff reported that the State Charter School Board met yesterday and took a position of total opposition to the bill. They felt there was only one thing of value in the bill and that was the money for extra staff for

the charter school board.

Superintendent Patti Harrington noted that there will be meetings over the weekend to work through this and staff is seeking input and modifications from the Board.

Member Cluff indicated that Charter Schools Association is devastated by this bill. They have gone to Senator Howard Stephenson and asked him to get into his SB 80, Education Reform, the recommendations and items of the audit and they have been put into SB 80. He recommended that the charter school items in Senator Stephenson's bill should be put into this bill and replace it in total.

Member Tom Gregory commented that he is extremely uncomfortable with the enumeration of charter schools and their enrollment counts in the bill. He felt this was a slippery slope into the legislature usurping the authority of the State Charter School Board and the State Board of Education.

Member Mark Cluff commented that through the work on the weekend with the bill if it is something the State Charter School Board or the State Board of Education can layout for example closures. The State Charter School Board already has an excellent method of closures that should not be included in statute. The general maintenance and funding issues is all that should be concerned about in the bill.

Carol Lear commented that there are some good portions of the bill such as relative involvement, conflicts of interest, etc. Also, there is important information about closures of schools that is not part of what the Charter Board is doing.

Member Denis Morrill questioned if there was a reasonable probability that something satisfactory can be worked out.

Superintendent Harrington responded that the Senator has indicated that the bill will make everyone a little uncomfortable and that is when he will know he has struck a compromise. She indicated that after talking with the State Charter School Board and from this meeting there are ways this can be worked through. She applauded Member Cluff's suggestion of not being specific in the bill but rather direct different groups to get specific about certain matters such as closures, conflicts, etc. There are some other pieces of the charter audit that are not addressed in the bill, for example, a definition of why a charter should be allowed a charter. This was given to the legislature to do in the original bill. Bringing the audit to bare over the weekend will help.

Member Morrill questioned if the Board would have another meeting after this weekend in order to discuss this. Dr. Timothy noted that there was a meeting scheduled for next Friday if it was deemed necessary.

Motion to place a watch on HB 164 carried with Members Allen, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill and Theurer voting in favor; Member Gregory opposed; Member Brown absent.

Discussion ensued that there was the potential meeting scheduled on February 23 to discuss legislative items and which may be too late for a discussion on this issue. It was suggested that the meeting be moved to the first part of

the week.

SB 80 - Education Reform

Deputy Superintendent Ray Timothy described the contents of the bill. He noted that there is a lot in the bill and most of it still needs to be worked through. Legislative Research has asked us to help clean up some of the language, but some is hard and fast as it is based upon the sponsors desire.

Motion was made by Member Dixie Allen and seconded by Member Denis R. Morrill to oppose with comment that the Board supports many of the concepts but not in the manner that they have been included in the bill.

Member Allen commented that these omnibus bills cause us a lot of grief and in trying to accomplish the tasks we find lots of errors. She suggested we get the information to Senator Stephenson that some of the concepts might be good if we could pull them out and deal with them individually rather than wrapped up in one bill. Further, there are things in the bill we don't need or want.

Member Denis Morrill commented that he is tired of dealing with this micro management of public education. We are the constitutional body supposedly empowered to operate education in the state, but every session our powers get diminished. This bill does it again. If the legislature wants to operate the school system - let them.

Member Bill Colbert questioned if there was another vehicle for the \$50 million for technology to come to us. Dr. Timothy responded that Senator Hillyard is the one that has come forward and wants the \$50 million one time.

Associate Superintendent Patrick Ogden commented that this amount could easily be placed in H.B. 160, Minimum School Program Budget Amendments.

Motion carried with Members Allen, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill and Theurer voting in favor; Member Brown absent.

HB 382 - Amendments to Education Funding

Motion was made by Member Denis R. Morrill and seconded by Member Randall A. Mackey to support. Motion carried unanimously.

SB 81 - Home School and Extracurricular Activity Amendments

Deputy Superintendent Ray Timothy distributed a copy of the Utah High School Activities Association Handbook including clarifications presented by Member Teresa Theurer. (For complete details see General Exhibit No. 10161,)

Member Theurer encouraged Board Members to contact their legislators and encourage their local board members to contact their legislators stressing opposition to this legislation. This is really an area of legislation where there is something already in place and this does not need to be done.

SJR 11 S2 - Resolution Providing Appointment of State Education Officers

Motion was made by Member Mark Cluff and seconded by Member Michael G. Jensen to oppose. Motion

carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Gregory, Jensen, Mackey, Morrill and Theurer voting in favor.

SB 194 S1 - Board of Education Membership Amendments

Motion was made by Member Bill Colbert and seconded by Member Randall A. Mackey to oppose. Motion carried unanimously.

SB 57 S1 - High School Graduation Amendments

Motion was made by Member Dixie L. Allen and seconded by Vice Chairman Janet A. Cannon to oppose. Motion carried unanimously.

HB 291 S3 - Students Qualifying for Services for the Deaf

Linda Rutledge, Superintendent, Utah Schools for the Deaf and the Blind and Karl Wilson, Title I Program Director, presented concerns regarding the bill. They noted that the State Board supported the concept of the earlier bill, specifically on the wording cleaning up the age limit. There is now a third substitute to the bill. The following concerns were expressed by Ms. Rutledge and Mr. Wilson: (1) Boarder eligibility; (2) Fiscal note; (3) Mission of USDB; and (4) New USBE Responsibility. (For complete details see General Exhibit No. 10162.)

Member Tom Gregory clarified that the language states that the State Board of Education **may** allow, therefore granting us authority to make stricter rules than what is in here. The scenario proposed can be stopped at the Board level to provide stricter entry requirements if the Board sees fit.

Ms. Rutledge presented a scenario of what happens in IEP's. There are times that it becomes a who pays issues versus who really qualifies or who best fits USDB.

Member Denis Morrill voiced his concern about legislation for one students problem.

Member Laurel Brown commented that she did not think the intent of the language is that the Board could make rule to restrict entrance. She questioned if we wanted to be in a position of making decisions on every one of these cases and does the Board have the expertise to understand the disability. This not only opens it up for people under age 22 capable of receiving beneficial instruction, but potentially if a parent decided that their normally developing student it would be nice if they could develop a second language as they went through public school, i.e. American Sign Language, could say they want that student to go to USDB so when he finishes school he has two languages.

Motion was made by Member Randall A. Mackey and seconded by Member Denis R. Morrill to oppose. Commenting that the bill is fraught with potential problems based on the concerns that have been made and that this is not the role of USDB to go outside their mission as presently established.

Member Mark Cluff commented that he would be voting in opposition to the motion. He likes the direction this has gone it could have used some more working to redefine it. In our constitutional position of general control and

supervision of public education it puts us as the gate keeper. We would depend on our experts to filter what would come to us based on requirements we would have in rules. He is looking to help children. If the Schools for the Deaf and the Blind can help a child that is not receiving help somewhere else, we need to have the ability to allow the child to receive that instruction. He commented that another thing this has brought out and a concern he has is the funding. We have within our state three or four different ways of funding education for children. Maybe it is time for us to look at one system to fund education of children in our state.

Member Gregory passed the gavel to Chairman Kim Burningham.

Member Gregory commented that it is frustrating that the Board can say on other bills, this is an over extension of the authority of the legislature in authority granted to us constitutionally and when they allow us authority granted by the constitution to make rule, we say we do not want to make that decision, we would like you to make it for us. Under those rules to address the concerns. There is no reason why the Schools for the Deaf and Blind cannot suggest those rules. These questions should first be handled by the Utah Schools for the Deaf and the Blind level or the State Office of Rehabilitation level. There is no reason the Board should not define that process.

Member Denis Morrill commented that as a lawyer he reads it differently. To set up a straw man to create a problem so I can have the privilege of making rules to solve it does not give him pleasure. This is set up for one particular person that if they had been accepted this bill would have never appeared. When the legislature gives us in statute criteria you by rule cannot change the criteria. The system is not broken and you can't fix it this way.

Member Teresa Theurer commented that she supports the motion. She agrees this bill is set up for a few people.

Member Tom Gregory contested that the statute currently is broken because it says we are supposed to be admitting people over the age of 21 which we are not doing. This has been substituted three times based on our feedback and it is broad enough now to allow us authority.

Member Bill Colbert commented the he would like to see away to fix this outside the statute.

Vice Chairman Janet Cannon commented that she feels for these parents who have not been able to get help for their child. This is one thing we should open our ears to, to say we need to make education more consumer friendly. She will support the motion because she could see a whole web of problems opening up with this. Perhaps we should look at funding these things differently because we put USDB in a horrible situation and open up the possibility of them taking on all kinds of low incident, high cost students that could severely jeopardize the positive things we are doing for all the other low incident high cost students they currently serve. to make education more consumer friendly.

Motion carried with Members Allen, Brown, Burningham, Cannon, Jensen, Mackey, Morrill and Theurer voting in favor; Members Cluff, Colbert and Gregory opposed.

The gavel was returned to Member Gregory.

HB 149 S 1 - Class Size Reduction in Grades Kindergarten Through Three

Deputy Superintendent Ray Timothy commented that the Board has not taken a position on the original bill nor the first substitute.

Motion was made by Member Laurel Brown and seconded by Vice Chairman Janet A. Cannon to support.

Associate Superintendent Patrick Ogden commented that this is a wolf in sheep's clothing. It does set a mandatory class size caps for grades K-12, it requires a maximum average class size of 20 with no single classroom larger than 22 students. For grades two through three the maximum average class size will be 22 with a maximum single classroom size of 24. Failure to comply with this after three years will result in the forfeiture of all the class size reduction money. The rationale is that it is their feeling that current class size reduction funding is not being use to reduce class sizes so therefore something must be done to force districts to use that money to reduce class sizes. We have done an estimate which indicates that if districts have to meet these class size limits it will require \$26 million of district funding to do this. They have appropriated \$5 million so it is a net \$21 million districts will have to come up with in their budgets. The \$26 million does not include administration or infrastructure costs.

Based on the clarification provided by Mr. Ogden, Member Brown withdrew her motion.

Motion was made by Member Mark Cluff and seconded by Member Bill Colbert to oppose HB 149S1, with the comment that we support the concept of smaller class sizes but oppose unfunded mandates. Motion carried with Members Brown, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill and Theurer voting in favor; Member Allen absent.

HB 155 - Student Achievement Assessment Amendments

Representative Newbold has requested the Board provide a letter of support. A letter was presented for the boards consideration. (For complete details see General Exhibit No. 10163.)

Motion was made by Member Teresa L. Theurer and seconded by Chairman Kim Burningham to send the letter. Motion carried with Members Brown, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill and Theurer voting in favor; Member Allen absent.

HB 165 - School Fee Amendments

Motion was made by Member Mark Cluff and seconded by Member Bill Colbert to support.

Member Mark Cluff commented that Representative Frank had shared this with him and the PTA and they were excited. This talks about the fee waivers and funding them and people keep asking why do we even have fees. Representative Frank is not sure this will go any where this session but it has started a discussion.

Member Teresa Theurer commented she did not feel comfortable in supporting this until we are sure there is extra money put into the system to make this up.

Substitute motion was made by Member Teresa L. Theurer and seconded by Chairman Kim R.

Burningham, to support the concept with comment that we would like to see the money put into the system to make it up. Motion carried with Members Brown, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill and Theurer voting in favor; Member Allen absent.

SB 30 S1 - Creation of New School District Amendments

Member Mark Cluff reported that SB 30 S1 passed and has been sent to the Governor for signature. It clarifies splitting school districts, in particular after they have been split. One of the items is that for interim they will be discussing taxing items as well as whether there should be a set figure that a school district should be required to split at a certain size. He has sent out a proposal in regard to this and he would like to see us be proactive in working on a position relative to that.

Motion was made by Member Mark Cluff and seconded by Chairman Kim R. Burningham to direct staff to create board rule based on his proposal for splitting school districts. Member Denis Morrill commented that having served on a local board and knowing something about bonds, if this really allows them from prohibiting them from spending bond money, the bonding agencies and companies will have many concerns.

Motion carried with Members Brown, Burningham, Cluff, Colbert, Jensen, Mackey, Morrill and Theurer voting in favor; Member Allen absent.

(For complete details of the legislation materials see General Exhibit No. 10164.)

Next Meeting

Discussion ensued relative to holding the next meeting early in the week rather than waiting for the Friday, February 23rd meeting in light of the charter school legislation being proposed.

It was determined that the next meeting would be held on Tuesday, February 20, 2007 at 12:00 p.m. if a quorum could be obtained.

Budget Update

Associate Superintendent Patrick Ogden presented an update on the budget revenue estimates. He indicated that the subcommittee will probably not meet again and the budget in hands of Executive Appropriations Committee.

(For complete details see General Exhibit No. 10165.)

Meeting adjourned at 12:15 p.m.