

MINUTES

January 31 2007

Minutes of the special legislative meeting of the State Board of Education held January 31 2007, at the State Office of Education, 250 East 500 South, Salt Lake City, Utah. Meeting commenced at 12:00 p.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 Greg W. Haws
Member Michael G. Jensen
Member Randall Mackey
Member Cyndee Miya
Member Denis R. Morrill
Member Richard Moss
Member Debra Roberts
Member Teresa L. Theurer

Members Dixie L. Allen and Teresa L. Theurer participated via Polycom. Members, Josh Reid, Richard Sadler, and Marlon O. Snow were excused.

Also present were:

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

Superintendent Patti Harrington was excused.

HB 148 - Education Vouchers

Deputy Superintendent Ray Timothy noted that the Board had taken a position of opposition to the concept at the last meeting prior to the bill being published. The bill has now been published and it is on the agenda so it can be discussed after the Board has seen the content of the bill.

Motion was made by Chairman Kim R. Burningham and seconded by Member Denis R. Morrill to change the Board position from oppose the concept to oppose.

Member Bill Colbert questioned the reasoning for a position of oppose because the legislation as written holds the district harmless from any fiscal impact

Dr. Timothy responded that it mitigates the harm of the district for five years or until the student would have graduated.

Member Denis Morrill commented that he is opposed to the double payment for one student because it does not sound like good business. The fact that the school is held harmless does not help the taxpayer. Secondly, is the point that we start funding another school system when we can't fund the one we have. And lastly, he is opposed to taking public money for private purposes.

Member Colbert responded that we do it all the time with food stamps, Pel grants and we fund private enterprise with public funds. He stated that he has heard that people are afraid that vouchers will be the end of public education as we know it. Perhaps it will be a change to public education. Also the concern that it will be taking money from public education and putting it into a private system. He continued that he understood that the state is mandated to provide education dollars to all of our eligible students.

Member Colbert further indicated that vouchers work in other systems and are especially attractive for those students that are coming from families that are impoverished or challenged and their needs are not currently being met with the current system.

Member Greg Haws commented that if it can hold school systems harmless they are paying for them from other sources and if that money is available from that other source why haven't we been using it. He commented on an article he read where other states that have done this, and the statistic they were using is that in every case where vouchers have been approved the property tax has gone up. If we are willing to raise our property tax to fund this secondary system, why don't we raise the property tax to fund the primary system. He did not think that the State Board as guardians and trustees of the public school system is ever going to move off the position of opposition to diverting public money to private schools.

Member Laurel Brown spoke in opposition to the voucher bill indicating that one of the biggest hurdles she is having difficulty with is the continual proposing of the idea that this is going to help parents who are in situation where they are impoverished and they don't choices. If we were to do that we would need to fund it more than what is being proposed. The voucher would need to pay close to 100% of the cost of a private education plus there are all the ancillary costs that the parents need, such as uniforms, being part of other activities, etc. She felt that this was promoting if you have the money you can come to the ball, or play the game. A lot of parent do not have that resource. This bill goes much more beyond other areas of the nation that have adopted a voucher system.

Member Teresa Theurer questioned if this passes and should legal issues arise where does the money come from to fight the legal issues.

Carol Lear responded that we don't know yet. There are many ways this could happen. The State Board could choose to not move forward in inacting the legislation at which time the Board could be sued. The Board could

move forward and then the Board could be sued, but any plaintiff is going to look for a deeper pocket. There are a number of different case management styles that maybe would come to pass. However, we can be clear that the state will pay for the litigation. This would be less money for roads, transportation and education.

Chairman Kim Burningham commented that one issue that is troubling him and he is reminded that the bill before us excludes all private school students currently there, except low income. In doing so, the bill does not have a high fiscal note and that is approximately \$30 million. This is blatantly unconstitutional, because the numbers are not consistent.

Member Mark Cluff commented that all of the Board members are trying to do all we can to try to help kids. We may disagree on how we accomplish that. This bill is not the one he would want, but the bill he would want would never pass and this is the best compromise that he has seen. There are still issues he has with it. He knows the bill will help kids who are not being helped currently in our public education system. This bill will not hurt any child currently in the public education system. We need to look outside, be more innovative and take risks some times because the greatest gains are given to those who are willing to take risks. Member Cluff then shared information on the NAPE scores. The status quo for what we have done is not working and we need to look at what helps achievement for children. This bill is not a magic bullet but it is something that could help some children.

Member Dixie Allen commented that as a State Board it behooves us to wait until we are funding education before we fund something else. This does nothing to fund education better.

Motion to oppose carried with Members Allen, Brown, Burningham, Cannon, Haws, Jensen, Morrill, Roberts and Theurer voting in favor; Members Cluff, Colbert and Moss opposed; Member Mackey absent.

HB 331 - School Board Alternatives to Basic Skills Competency Test

Member Gregory noted that this is not Representative Holdaway's Bill, HB 77, which went before the Education Committee last week and with a mostly party line vote the Education Committee voted not to advance it to the floor of the House. They asked that it be redone and sent back to them. If the Board supports the bill we need to contact our legislators on the Education Committee and ask them to pass the bill as it is written.

Ray Timothy reported that staff has been working with Representative Holdaway on this bill and we were asked a couple of days ago for the Board to take a position on HB 331 by Representative Daw.

Member Mark Cluff explained that he had been working with Representative Daw to create a bill that will allow the Board, if we find something better than UBSCT, to have the freedom to choose another test. There is also clean up language relative to dates that do not need to be there any more.

Carol Lear indicated she has had conversations with some legislators that had concerns that this bill could be hijacked and turned into a situation where we would not have an appeals process in UBSCT and have a reverse of what we were trying to fix in Representative Holdaway's bill where we would have an opportunity for an appeals

process.

Member Mark Cluff noted that he did not feel they were mutually exclusive and that they complimented each other and he would support both. We need a process, not necessarily to the extent that Representative Holdaway has placed it but there needs to be some recourse for students who have not passed it. This bill just allows the Board to function as a constitutional entity to select something better than UBSCT should we find something better.

Member Teresa Theurer commented that she was supportive of Representative Holdaway's bill and this bill makes her a little nervous.

Carol Lear commented that the committee still is holding Representative Holdaway's bill. The committee's intention was to take care of 504, ELL and special education students which are already addressed with all of their accommodations. The sticky point between those who voted for and against was the 340 students who do not fit into those categories who have not passed UBSCT. The sense of the committee was we are not prepared to say they should get any type of diploma. The minority vote was they wanted an appeals process which Representative Holdaway's bill allowed for or we want to see they get some kind of diploma.

Motion was made by Member Teresa L. Theurer and seconded by Member Denis R. Morrill to oppose HB 331 with the comment that we want to continue working with Representative Holdaway on HB 77.

Member Laurel Brown commented she was hoping that we could hold this for further study, there are too many questions still unanswered.

Member Mark Cluff commented that this is an innocent bill and we need both bills and they are not mutually exclusive and we can be on record supporting both. This bill should not be to replace Representative Holdaway's bill but should be working hand in hand with his bill. This is the way Representative Daw intended as well.

Member Teresa Theurer commented that if we support this bill the other will go away and we need the other bill badly. The other bill includes all that HB 331 has plus a lot more.

Vice Chairman Janet Cannon indicated that this bill allows the Board to design a basic skills competency test or use a nationally norm reference exam, including a college entrance exam, i.e. ACT. She commented that we investigated this there were reasons this would not work. Associate Superintendent Myron Cottam reported that we had approached ACT this past summer with this thought in mind, and they told us they did not want to get into the business of an exit exam. Their tests were not designed for that and they would not allow us to use their test for this. He has talked with Representative Daw about this and he expressed that he was trying to give some flexibility to the State Board and said we should figure out what we would like to make this work. Right now the norm referenced test is not designed for an exit exam.

Vice Chairman Cannon noted that she did not see anything in the bill that would give an alternative

diploma to those students who do not fit into the alternate assessment sections. She further noted that this one has a school performance component to it that is to be filed annually by the State Board. How does this differ from what we have to do for NCLB reporting and Adequate Yearly Progress? Member Cluff indicated that this was currently in statute and not new.

Chairman Kim Burningham some parts of this bill are compatible with the other and we want the appeal process. He questioned if we could work to include elements of this into one bill. He is hesitant to take a position of oppose but would rather have a compromise.

Member Teresa Theurer changed her motion with Member Morrill accepting the change to unnecessary of HB 331 with the comment that HB 77 addresses what HB 331 does and we need HB 77.

Member Denis Morrill commented that when UBSCT passed, we had very little say in the legislation. Unless the legislature has made a big shift, for them to give that back to us to do is very surprising. His opposition was that we have too much going on in a similar field and would rather see them joined.

Member Mark Cluff commented that over the last year we have gutted UBSCT and it is not an exit exam, anyone who wants to get a diploma gets a diploma. There are good reasons to have an exit exam, but he did not feel we needed them. We need a test in the middle school so by the time we hit the ninth grade our students can read and write and do some basic math. That should be our goal and UBSCT does not provide that – it is too late in the system.

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

Motion was made by Chairman Kim R. Burningham and seconded by Member Mark Cluff to add to our comments that we are not opposed to the concept and would like to see both bills integrated and instruct staff to work closely with the people involved to see if they can make the two ideas come together in a compatible way. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Haws, Jensen, Morrill, Moss and Roberts voting in favor; Member Theurer opposed; Member Mackey absent.

ProExcel

Deputy Superintendent Ray Timothy updated the Board on where the language of the bill is going to make sure we are going the direction the Board wants us to go as the language is still being finalized. He referenced the ProExcel pamphlet and the three components: Educational Leadership, Teacher Retention and Professional Compensation. (For complete details see General Exhibit No. 10126.)

He reported that Senator Stephenson believes strongly that we need to take the performance growth off until it can be further developed, working on it over the interim session. He shared the Denver Pro Comp model compared with our model. We are taking off the table the value added, with language in the bill stating that we will work on those statewide goals and put it into place for next legislative session. We need more time to fully develop this with all

stakeholders. The UEA felt comfortable in pulling this off now. We are looking at market incentives and no merit pay. Dr. Timothy explained the ProExcel Market Incentives. (For complete details see General Exhibit 10127.)

Dr. Timothy commented that we are still headed in the same direction with Pro Excel. We have taken the student performance growth off until it can be developed. Legislators are supportive of where we want to go with this and they are recognizing that \$50 million can't do everything we want to do. This is going to take two to four years to roll it into where we want it to be.

Dr. Timothy indicated he has talked to UEA and Kim Campbell, President of UEA is here and she has a concept that she has put forward that instead of rolling it out as a stipend to give the money to the local district and have them utilize it to give them the flexibility to offer extended contracts to those teachers in those areas.

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

Following comments and questions for clarification motion to support the concept of Pro Excel and outlined carried with Members Allen, Brown, Burningham, cannon, Cluff, Colbert, Haws, Jensen, Morrill, Moss, Roberts and Theurer voting in favor; Member Mackey absent..

Utah Schools for the Deaf and the Blind Statement

Associate Superintendent Myron Cottam reported that the facilities for the Utah Schools for the Deaf and the Blind are not appropriate, one will be demolished and they need a new building. They are seeking a letter of support from the Board to the Capital Facilities and Government Operations Appropriations Subcommittee to build a new facility to replace the two leased facilities that the USDB is using in the Salt Lake City area. (For complete details of the letter see General Exhibit No. 10128.).

Motion was made by Member Mark Cluff and seconded by Member Greg W. Haws to support the letter to those intended for the Utah Schools for the Deaf and the Blind capital facilities request. Motion carried with Members Allen, Brown, Burningham, Cannon, cluff, Colbert, Haws, Jensen, Morrill, Moss, Roberts and Theurer voting in favor; Member Mackey absent.

Board Legislative Positions

HB 75 - Procedures for Dividing School Districts

SB 30 S1 - Creation of New School District Amendments

Deputy Superintendent Ray Timothy reported that both bills deal with the procedures to divide school districts. As staff has reviewed both bills there is still some clarification issues. HB 75 by Representative Mascaro allows the people who are left behind to be able to vote on whether or not they want to split the district. SB 30 1S, does not allow that. Staff recommendation on both bills is to continue to hold for further study as we continue to work with the sponsors of both bills for greater clarity.

Member Laurel Brown reported that there is stronger support from the education community for HB 75.

Motion was made by Member Mark Cluff and seconded by Member Bill Colbert to oppose HB 75 and support SB 30 S1.

Member Teresa Theurer commented that she would be voting in opposition to the motion because as the Board has talked about this for several years she still feels this is a district decision and the State Board should not be making these decisions.

Vice Chairman Janet Cannon stated that SB 30 is based on the model they used to allow cities to incorporate.

Member Mark Cluff noted that he had sent out an email with a proposal of how to divide school district that was only for talking. This is not incorporated in this legislation.

Member Cluff reported that he is hearing that there is not much support for HB 75 and some are willing to replace it with something else. SB 30 cleans up a lot of the errors and problems. There is a group that met through this past year that has made recommendations and SB 30 takes those recommendations and lays out a better process.

Member Cluff commented that for him the bottom line is about student achievement. Everything he has seen nationally, and now locally in his area, these smaller districts are the optimal size for a school district. There is more local control and a sense of community. He would like the process to take some time so we can look at the facts and review the data.

Member Denis Morrill commented that smaller is not better but is a myth. He feels it is a people problem and the problems will not go away with division. There are many costs associated with dividing districts. If achievement theory were true then Tintic and San Juan should be the best schools we have in the state. He would oppose SB 30 S1.

Chairman Kim Burningham indicated his main concern is the financial issue. He felt we need a really good equalization program better than what we now have.

Member Denis Morrill requested the motion be split

Motion to oppose HB 75 failed with Members Cannon, Cluff, Colbert, Moss and Theurer voting in favor; Members Allen, Brown, Burningham, Haws, Jensen, Morrill, and Roberts voting against; Member Mackey absent.

Motion to support SB 30 S1 failed with Members Cannon, Cluff, Colbert, Haws and Moss voting in favor; Members Allen, Brown, Burningham, Jensen, Morrill, Roberts and Theurer opposed; Member Mackey absent.

HB 224 - Repeal of Exemptions from Non-resident Tuition

Member Cyndee Miya representing CMAC presented a recommendation from CMAC in opposition to the legislation.

Motion was made by Member Mark Cluff and seconded by Member Bill Colbert that the Board take no

position. He commented that he is conflicted on this, he can see both sides and given certain items support either side. This is not a public education issue it is a state and federal issue.

Member Greg Haws commented that while this does not impact public education it does higher education and the Board of Regents is opposed to this. One of the things that is problematic here is that the same thing that is being imposed upon us that we provide free education to non citizens it not being imposed upon higher education, but they will likely remain as residents of our community. One of the major initiatives of the Board of Regents and the Utah Office of Higher Education is to attract more minorities and disadvantaged into higher education and they see this as going in the opposite direction. He would like the Board to support the Board of Regents and CMAC in a position of oppose.

Substitute motion was made by Member Denis R. Morrill and seconded by Member Laurel O. Brown to oppose HB 224.

Member Morrill commented that we have educated these students, they are our kids and they live in our community and they going to continue to do so. This seems like someone wants to penalize them for something their parents did.

Vice Chairman Janet Cannon spoke in favor of the substitute motion. She indicated she had heard a women speaking to this and they are here legally. However their children will fall victim to this and it will take 11 years for them to get legal status.

Member Bill Colbert commented that he understands the kids are victimized by choices of their parents. The issue of inequity bothers him. The best solution, if this is a good thing, is we should not have a differential tuition. We should have one in-resident tuition for everyone. He commented on the in-resident tuition for states along our borders. He noted further that we have students that have appropriate documentation and do not qualify for in-resident tuition. This all goes back to a failed immigration policy which put the burden to the state from the federal government.

Member Teresa Theurer spoke in favor of the substitute motion. She commented that this is a big deal about such a small number of students.

Substitute motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Haws, Jensen, Mackey, Morrill, Moss, Roberts and Theurer voting in favor; Member Colbert opposed.

SB 194 - Board of Education Membership Amendments

Motion was made by Member Bill Colbert and seconded by Member Denis R. Morrill to oppose SB 194.

Several board members commented on the current system for selection of Board members, both in how it may be working or not working. Most expressing opposition to the process becoming partisan. Motion to oppose SB 194 carried with Members Allen, Brown, Burningham, Cannon, Colbert, Haws, Jensen, Mackey, Morrill, Moss,

Roberts and Theurer voting in favor; Member Cluff opposed.

SJR 11 - Resolution Providing Appointment of State Superintendent

Motion was made by Chairman Kim R. Burningham and seconded by Member Mark Cluff to oppose.

Motion carried unanimously.

SB 65 - Elementary School Math Initiative

Motion was made by Chairman Kim R. Burningham and seconded by Member Randall Mackey to support -

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

HB 100 - Accessing Pornography on School Property

Motion was made by Member Denis R. Morrill and seconded by Member Bill Colbert to support. Motion carried unanimously.

HB 124 - Agricultural Education

Motion was made by Member Bill Colbert and seconded by Member Teresa Theurer to support. Motion carried unanimously.

HB 260 - Post Retirement Employment

Concern was expressed for the need of educators and Rehabilitation Counselor shortages. The Board asked that staff discuss with the sponsor exemption education and USOE from the bill.

Motion was made by Member Bill Colbert and seconded by Member Mark Cluff to oppose the bill unless education and USOR are exempted. Motion carried unanimously.

HB 304 - State Treasurer Compensation

Motion was made by Member Denis R. Morrill seconded by Vice Chairman Janet A. Cannon to support. Motion carried unanimously.

HB322 - Driver Education Curriculum

Motion was made by Member Dixie L. Allen and seconded by Member Richard Moss to oppose. Motion carried unanimously.

Member Greg Haws commented that opposition is highly sensitive to this issue. He would rather see the Board take a position of oppose because it is unnecessary.

Motion to reconsider was made by Member Mark Cluff and seconded Chairman Kim R. Burningham. Motion carried unanimously.

Motion was made by Member Mark Cluff and seconded by Member Greg W. Haws to take a position of unnecessary on HB 322. Motion carried unanimously.

HCR 5 - Early Childhood Reading Readiness Resolution

Motion was made by Member Denis R. Morrill and seconded by Member Laurel O. Brown to support. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill, Moss, Roberts and Theurer voting in favor; Member Haws absent.

SCR 2 - Resolution Promoting Legislators Back to School Program

Motion was made by Vice Chairman Janet A. Cannon and seconded by Member Michael G. Jensen to support. Motion carried with Members Allen, Brown, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill, Moss, Roberts and Theurer voting in favor; Members Burningham and Haws absent.

HB 155 - Student Achievement Amendments

Motion was made by Member Teresa L. Theurer and seconded by Member Mark Cluff to support. Motion carried with Members Allen, Brown, Burningham, Cannon, Cluff, Colbert, Jensen, Mackey, Morrill, Moss, Roberts and Theurer voting in favor; Member Haws absent.

SB 70 - Changing name of UVSC to Utah Valley University

Member Richard Moss asked that SB 70 be discussed. It was noted that it was not on the Tracking Sheet and the notice of the meeting indicated Additional Bills from the Tracking Sheet. Therefore, no action could be taken on the bill.

(For complete details of the materials presented on legislation see General Exhibit No. 10129.

Motion to adjourn was made by Member Mark Cluff and seconded by Vice Chairman Janet A. Cannon to adjourn. Motion carried.

Meeting adjourned at 2:25 p.m.