

# **PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

## **Minutes**

**June 11, 2020**

### **Call to Order and Roll Call**

The Program Review and Investigations Committee met on Thursday, June 11, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Greg Hager, Committee Staff Administrator, called the meeting to order, and the secretary called the roll. Committee members and guests have been authorized to participate in the meeting remotely.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Tom Buford, Michael J. Nemes, Reginald Thomas, Stephen West, Whitney Westerfield, and Phillip Wheeler; Representatives Adam Koenig, Ruth Ann Palumbo, Steve Riley, Rob Rothenburger, and Walker Thomas.

Guests: Eric Friedlander, Secretary, Cabinet for Health Family Services; Sarah Vanover, Director, Division of Child Care, Department for Community Based Services; Melissa Moore, Director, Division of Regulated Child Care, Office of Inspector General, Cabinet for Health Family Services; Elizabeth Caywood, Deputy Commissioner, Department for Community Based Services; Kelli Rodman, Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health Family Services; Ashli Watts, President and Chief Executive Officer, Kentucky Chamber of Commerce; Melanie Barker, Owner/President /Director, ABC Children's Academy; Gary Logsdon, General Counsel, ABC Children's Academy; Kathy A. Donelan, Owner, Aunt Kathy's Child Care & Preschool; Vickie Grabowski, Owner and President, Kids Academy Child Care; Leigh Roark, Co-owner, Smart Start Early Learning Academy; Sarah Veillon, Co-owner, Smart Start Early Learning Academy; and Jennifer Washburn, Executive Director, iKids Childhood Enrichment Center.

LRC Staff: Greg Hager, Committee Staff Administrator; William Spears; Joel Thomas; and Elizabeth Hardy, Committee Assistant.

### **Election of Co-chairs**

Mr. Hager asked for nominations for Senate co-chair.

Senator Nemes nominated Senator Carroll. Senator West seconded the motion. Senator Westerfield made a motion that nominations cease and that Senator Carroll be

elected by acclamation. Senator West seconded the motion, and Senator Carroll was elected by acclamation.

Senator Carroll asked for nominations for House co-chair.

Representative Thomas nominated Representative Bechler. Representative Koenig seconded the motion. Representative Thomas made a motion that nominations cease and that Representative Bechler be elected by acclamation. Representative Rothenburger seconded the motion, and Representative Bechler was elected by acclamation.

### **Minutes for November 22, 2019**

Upon motion by Senator Westerfield and second by Representative Rothenburger, minutes for the November 22, 2019 meeting were approved without objection.

### **Child Care in Kentucky During the Pandemic**

Senator Carroll said legislators have been receiving numerous calls about child care. Businesses that are reopening need child care for their employees. Child care facilities are struggling to survive. There were issues with child care even before the pandemic, with more than half of the state living in child care deserts. The problem of a lack of child care is only going to get worse. There has been some financial assistance for child care centers. He said the meeting would begin with testimony from those who run child care centers, with the hope that administration officials will be responsive to their concerns.

Ms. Washburn said that she has been in the business for 21 years. Hers is the only privately-owned, nationally certified early child care center in western Kentucky. She gets no grants or governmental financial assistance but did get money from the Paycheck Protection Program (PPP) for the center. The center can take only 3 to 4 subsidy children due to the financial constraint. Her presentation covered staffing, revenue forgone by operating as a high quality center with higher child-to-staff ratios than required, financial losses while operating as a limited duration center (LDC) during the pandemic, and anticipated losses with the newly mandated group size reductions and staff increases. She said that she appreciates that the state has continued to make CCAP [Child Care Assistance Program] payments, the sustainability stipend given to centers, and the HEROES bonus from the CARES [Coronavirus Aid, Relief, and Economic Security] Act . But these are temporary. Her PPP funding ends June 12. Eleven percent of child care facilities do not plan to reopen on June 15.

In response to a question from Senator Carroll, Ms. Washburn said that most states have allowed child care centers to remain open with safety measures. Kentucky shut child care down completely. Centers had no seat at the table to decide how to move forward. Many children are in the care of grandparents, who are a vulnerable population.

Ms. Barker said that she has worked in child care for 18 years. Until this year, her center had never been ordered to close by local or state authorities. Her center has been closed for 12 weeks due to Governor Beshear's order. She said that her claim with her insurance company related to the loss of business income during the COVID-19 closure was denied. She contacted an attorney and other centers to see whether they had similar issues. She said that she tried to contact the governor's office but received no response. She wants the governor to order insurance companies to pay. She plans to file a class action lawsuit against her insurance company related to her claim denial. She said that the PPP small business loan only covered personnel/payroll costs and it was temporary. She did not receive any disaster-related funding. The funding she has received does not cover her operating costs. She does not want to take out a loan. According to her research, the only states that required all child care centers to close are Kentucky, Massachusetts, Ohio, Oregon, and Rhode Island. She applied to operate as a LDC but she was denied because the approval process is discriminatory. She cited Toyota's child care center as an example. The new ratios for child care centers are unfair because LDCs have been allowed to maintain the standard ratios. There should be financial compensation to centers to make up for the lost revenue due to the lower ratios. Prospective parents are not allowed to visit centers. She said no cases have been reported of children with coronavirus in child care centers in the US. Child care centers cannot operate with lower ratios. Child care centers need to know how long the lower ratios will be mandated. She wants the governor to call her.

Ms. Donelan said that she has operated a child care center for 22 years. Her center has 92 children and a four-star rating. Ms. Donelan said that she received PPP funding, CARES Act funding, an economic injury disaster loan, and a Small Business Administration loan. The loans have to be paid back. Her center cannot last for more than a month at limited capacity. She provided a handout that showed the loss of revenue for the 12 weeks her center has been closed and the expected decline in revenue when the center reopens with the new guidelines on June 15. She suggested that centers be allowed to operate at full capacity on July 6. She said that centers should be compensated for losses while at reduced capacity as Ohio does. Child care is essential for workforce development.

Ms. Veillon said that she and Ms. Roark were also co-owners of a pediatric therapy center. Ms. Roark stated that they have been in business for 1.5 years and they were about to make a payment on their business loan when they were forced to close during the pandemic. Ms. Roark said that they received a PPP small business loan but have been hesitant to use it. They received CCAP funding, but it is only 15 percent of revenue. Payroll is the largest expense. Ms. Veillon stated that they operate in an underserved rural area. It is unknown how the children who are not served will receive quality care while the center operates at reduced capacity. Ms. Roark said they have been flooded with phone calls when the reopening date was announced. They would like to have higher ratios; their capacity is 79 children and they lost eight spots. Ms. Roark estimated that they lost about \$3,800 from

the eight spots and have \$1,600 in additional staff expenses. She said that they pay more than minimum wage but cannot offer health insurance. Ms. Veillon stated that they have received some income from their pediatric center being open. They do not plan to raise tuition rates. Ms. Roark indicated that she was scared of what will happen, especially with contact tracing and how that will trickle down to the centers. She said that they are planning to open on June 15.

In response to a question from Senator Carroll, Ms. Roark confirmed that 80 percent of respondents to a recent survey indicated that they will have to increase tuition rates.

Ms. Grabowski said that she owns two child care centers in Jefferson County. She provided a handout showing the loss of revenue for the 12 weeks the centers were closed and the expected loss when they reopen at reduced capacity. She had assumed that the capacity limits would be temporary until groups of 50 are allowed on June 29. The guidelines for reopening are arbitrary and devastating. Of the five states that closed child care centers, Kentucky and Massachusetts were the last to reopen. Tennessee and Indiana paid child care centers for loss of income. Only 18 percent of children in Kentucky child care centers are enrolled in CCAP. Kentucky had 82 LDCs that provided care for approximately 2,500 children. They were not asked to decrease their child-to-staff ratios. No child, staff, or parent at an LDC has tested positive for COVID-19. If she had seen the new regulations earlier, she would not have told parents that her centers could provide care. The two main problems with the guidelines are the lower child-to-staff ratio and not being able to combine classes. Centers can only provide virtual tours, which hampers rebuilding the business. She is already in debt, so she does not want to take out another loan. She may have to sell the property on which one of her centers is located. It is imperative that the emergency regulations end by June 29.

Senator Carroll stressed that health and safety is the top priority. Of the states in which child care centers remained open, there have been no substantiated COVID-19 cases. Centers serving medically fragile children have been allowed to remain open in Kentucky. He only recently realized that his center qualified. He described the extensive sanitizing procedures his center and others use. He said that in some cases it is safer for a child to be in child care than at home.

Ms. Grabowski said that child care centers are good at monitoring the health of children. Disinfecting and handwashing are routine.

Senator Carroll said that the inconsistent rules are detrimental to families, children, and child care centers.

In response to a question from Senator Carroll as to whether they have had to turn children away, all the child care providers in the room nodded yes. Ms. Barker said that

the state pays for children on the assistance program whether they show up at the child care center or not.

Senator Thomas said that there has not been a rash of cases in child care centers. He stated that 17 of the COVID-10 deaths in Kentucky have been children 10 years old and younger. Given this, he asked whether it was prudent to have shut down child care centers for a period of time. Ms. Barker said that these are not confirmed COVID-19 cases. It was not necessary to shut down child care centers. Senator Thomas said that his source of information is the governor's press conferences. Ms. Barker said that she had not seen that information.

Senator Thomas stated that COVID-19 is an airborne disease and asymptomatic people could be carriers. He suggested that it was prudent to not allow parents in the facility. Ms. Grabowski gave examples of the child care centers at Ford and Toyota that have not been limited. She said that her doctor stated that most people will get some version of the virus but it will primarily affect older people. Senator Carroll asked Senator Thomas to provide his source of information for the 17 deaths. Senator Thomas said that he would do so. Ms. Washburn said the death statistics from the governor's website are 1 death for ages 0-9, none for 10 to 19. Other areas at which children congregate that are being allowed to open do not have the same health and safety standards as child care centers.

Ms. Watts said that as a mother of two she appreciates the need for quality child care. The chamber has long been a strong advocate for quality child care. This is not just a small business issue. Parents need high quality child care to participate in the workforce. Children need quality care to provide a foundation for life. Half of children entering kindergarten in Kentucky are not ready. The chamber has worked with legislators to ensure that all children in Kentucky have the opportunity for early childhood education. She cited statistics on states each losing hundreds of millions or billions of dollars in breakdowns in child care. She said that the chamber is hearing that lack of quality child care is the top impediment to businesses reopening. She said that a recent survey by the National Association for the Education of Young Children indicated that 89 percent of child care centers in the US may permanently close. In Kentucky, a survey indicated that 42 percent of child care providers are expected to permanently close because of the restrictions imposed due to COVID-19. If this happens, 56,000 children will not get quality child care. The chamber office has hired child care professionals so that staff can bring children into the office one day per week.

Senator Thomas said that early childhood education has been a top priority of his. There is a difference between early childhood education and going to a child care center. Kentucky has a serious persistent achievement gap that begins at kindergarten. He said that he hopes the committee will take an in-depth look at mandatory early childhood education in Kentucky this year.

Senator Nemes stressed that child care centers are small businesses that provide employment. It is important to have professionals at these facilities. When he was at the Education and Workforce Development cabinet, they stressed apprenticeship programs to help with this.

In response to questions from Representative Bechler, Ms. Watts said that there were three children per caregiver at the chamber. No one involved has contracted COVID-19.

Mr. Friedlander began the Cabinet for Health and Family Services presentation by stating that there were many unknowns at the time of Kentucky's first confirmed COVID-19 case on March 6. There was a concern that health care facilities would be overrun, so aggressive steps were taken. The result is that Kentucky's rates of death from COVID-19 are lower than almost all surrounding states. Underfunding child care is a national and state issue. Ms. Vanover described the timeline of school and child care program closures in Kentucky. Ms. Moore described the creation, capacity, location, and monitoring of LDCs, which provide care for children of first responders and essential workers. Mr. Friedlander said that as the need for LDCs became apparent, the cabinet contacted YMCAs because they have lots of space and are located statewide. Ms. Moore said that in communities without YMCAs, facilities could partner with child care centers. Ms. Vanover described two federal funding sources: CCAP and the CARES Act. More than \$40 million of the \$67.4 million in CARES child care aid was used to pay child care providers a one-time stipend of \$225 per child. CARES funding may be used to install temporary walls so that more than one class can be in a room, which would be helpful in meeting the guidelines on limiting capacity. During the course of the pandemic, the Division of Child Care has issued more than \$75 million to child care centers. She outlined the plan to reopen child care programs in Kentucky. Maximum group size is 10 children. Groups should not be combined during the day. Ms. Moore concluded the presentation with a status report on the implementation of Senate Bill 45.

In response to a question from Representative Koenig, Ms. Moore confirmed that there were no COVID deaths in LDCs, no child cases, and one adult case. He asked for a comparison of the requirements for LDCs to the requirements for reopened child care centers. Ms. Moore said the requirements were similar but generally less restrictive for LDCs. Ms. Vanover said that some LDCs went beyond the minimum requirements. Feedback from the LDCs and Centers for Disease Control (CDC) guidelines were used to create the requirements for child care centers. Representative Koenig asked why the new requirements should not be considered arbitrary. Ms. Vanover said that group sizes are different for the number of children coming back. Families are moving through the community more, so there is more risk for exposure. Mr. Friedlander said the LDCs had many fewer children. The risk is greater now given there will be hundreds of thousands of children in child care. Ms. Vanover said that a number of states, including Kentucky, aligned their reopening requirements with CDC guidelines.

In response to questions from Senator Carroll, Ms. Vanover said that the timing of the ending of restrictions will be based on the data. Mr. Friedlander said that it is hard to give a time frame because it will be based on the spread of the virus, which is largely unpredictable.

Senator West asked Mr. Friedlander about the 477 COVID-19 deaths in Kentucky. He asked if it had to be proven that individuals died from COVID-19 or if deaths listed as COVID-19-related meant that COVID-19 was a contributing factor. Mr. Friedlander responded that if people are diagnosed with COVID-19, then it is listed as a contributing factor. Senator West then asked why child care was not considered essential since Kentucky was not a hotspot area like New York. Mr. Friedlander responded that they did not want Kentucky to become a hotspot. Senator West asked why the regulations related to reopening child care centers did not go through the usual legislative review process. Mr. Friedlander said that the ordinary regulations would not have an immediate effect, which is why they needed the emergency regulations. Ms. Vanover indicated that the emergency regulations were temporary. Senator West said that it was good to hear it was an emergency and not a way to prevent public comment. Senator West asked whether consideration was given to the economic impact for the child care centers. Dr. Vanover said yes and that there was communication with directors of child care centers. Mr. Friedlander said it was a difficult balancing public health with business.

Senator Carroll said that he appreciated the balancing act but it was time to realize the worst case scenario has not happened. He said that people will lose their livelihoods. He asked why Kentucky is being so restrictive given the positive experience of other states. Mr. Friedlander responded that other states that have been more aggressive in reopening have experienced an increase in COVID-19 cases.

Representative Bechler said that term used should be orders, not guidelines. He asked whether data can be provided that supports the new regulations for child care centers. Mr. Friedlander said that data could be provided on state death and infection rates in general. Representative Bechler said that he wants to see this data, but the subject of this meeting is children; data related to children are needed. Mr. Friedlander said the epidemiological presentation on how the virus might spread in a facility will be provided. Representative Bechler commented that this is what might happen; it is not data about what did happen.

Senator Nemes commented that LDCs took the place of private child care centers at taxpayer expense. In response to his question, Ms. Vanover said the \$250 payment to LDCs was per child based on maximum program capacity. Senator Nemes said this cost could have been avoided if private child care centers had stayed open.

Senator Carroll asked whether there has been a COVID-19 death of a child in a child

care facility in the US. Mr. Friedlander said that he was aware of outbreaks in child care centers in other states but could not answer conclusively about deaths because the data are not always clear in other states.

Senator Carroll read a question on behalf of Senator Buford, who asked whether there have been discussions at the cabinet level or in the governor's office about making up lost revenue to centers. Mr. Friedlander said they are limited by the budget and are trying to use federal funds.

In response to questions from Senator Carroll, Ms. Vanover said that the Child Care Council of Kentucky created a work group that worked for weeks to develop recommendations for reopening child care centers. She attended all its virtual meetings. Ideas from the work group were used. Information was also used from CDC, the Department for Public Health, and other states. Child care providers were consulted. Mr. Friedlander said that legislators were not consulted because the process was moving quickly, but they are listening now. Senator Carroll said that this is after the fact. People in the legislature have expertise and could have contributed. Legislators are supposed to represent people but they have been shut out of the process.

In response to questions from Senator Thomas, Mr. Friedlander said that the health and safety of families and children have been the first priority but that there was and is a lot of uncertainty. Death rates are significantly lower in Kentucky than in other states.

Senator Westerfield said that he does not understand the inconsistency in what is closed and open. He and other senators have sent emails to the appropriate cabinets and officials in the governor's office. There was only one reply, which was just to acknowledge the email was being forwarded. He asked whom legislators should contact about concerns they are hearing from their constituents. Mr. Friedlander thanked the senator for the statement about his children. He said that Ms. Rodman is the point of contact for CHFS for responding to legislators. In the governor's office, contacts are Dorsey Ridley and Rocky Adkins. Senator Westerfield stated that Ms. Rodman has been responsive, but she is the exception. The lines of communication between the administration and the legislature have not been open in general.

Senator West said that business owners should receive clarification. He was willing to give a pass to the administration for the first 30 days of action. He said that Kentucky has the highest increase in unemployment in the US, which will affect state revenue. State government has an anticipated \$1 billion shortfall over the biennium. Anyone who wants financial help from the government should probably rely on federal funds. The best way the state can help is to get child care centers open quickly with as much flexibility as possible.



Ms. Barker said that child care centers do provide education. She said she called every state and only a few closed child care centers. Some centers, including hers, that applied to be LDCs were denied. She said that she has a large email group that asks questions but responses are lacking. She stated that she had emailed Ms. Rodman on June 10 but did not receive a response. Mr. Friedlander said that a response would be prepared for her questions. Ms. Barker responded that the governor could call her directly about her questions.

Ms. Washburn reiterated that child care centers provided quality education by describing the qualifications of herself and her staff and the types of instruction they provide. She invited Senator Thomas to visit her center, which he said that he would do. Senator Thomas said he wants the state to fund early childhood education due to existing achievement gaps. Ms. Washburn asked Senator Thomas to clarify his statements to indicate there are no publicly funded early childhood education programs in the state.

Senator Carroll said many people do not have access to child care. He agreed that early childhood education needs to be funded.

The meeting was adjourned at 3:42 p.m.