

# **INTERIM JOINT COMMITTEE ON EDUCATION**

## **Minutes of the 2nd Meeting of the 2020 Interim**

**July 7, 2020**

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

The 2nd meeting of the Interim Joint Committee on Education was held on Tuesday, July 7, 2020, at 10:30 AM, in Room 171 of the Capitol Annex. Senator Max Wise, Chair, called the meeting to order, and staff called the roll.

Present were:

Members: Senator Max Wise, Co-Chair; Representative Regina Huff, Co-Chair; Senators David P. Givens, Jimmy Higdon, Alice Forgy Kerr, Stephen Meredith, Gerald A. Neal, Michael J. Nemes, Robert Stivers II, Reginald Thomas, Stephen West, and Mike Wilson; Representatives Kim Banta, Tina Bojanowski, R. Travis Brenda, Randy Bridges, Jeffery Donohue, Jim Glenn, Mark Hart, Scott Lewis, Mary Lou Marzian, C. Ed Massey, Bobby McCool, Kimberly Poore Moser, Melinda Gibbons Prunty, Steve Riley, Attica Scott, John Sims Jr, James Tipton, Russell Webber, Richard White, and Lisa Willner.

LRC Staff: Jo Carole Ellis, Joshua Collins, Christal White, and Maurya Allen.

Senator Wise welcomed the members attending both in-person or remotely and recognized Co-Chair Huff.

### **Approval of Minutes – June 2, 2020**

The minutes of the previous meeting were approved by voice vote.

### **Critical Needs for Reopening Schools**

Presenting the critical needs for reopening schools were Dr. Jim Flynn, Executive Director, Kentucky Association of School Superintendents (KASS); Eddie Campbell, President, Kentucky Education Association (KEA); and Eric Kennedy, Director of Advocacy, Kentucky School Boards Association, (KSBA).

Mr. Kennedy said the biggest needs, issues, and concerns identified on the board's questionnaire to reopen schools safely were providing multiple modes of instruction; staffing needs; funding and procurement for additional classroom materials, cleaning supplies and other virus mitigation measures; additional instruction, compliance, and support from students, families, and staff; the burden of liability on a board or district; and expectations for statewide assessments.

Mr. Kennedy said while safety, health, and well-being are top priorities for students and staff, survey results indicated a concern for district, school board, and individual employee liability. Healthy at school requirements, guidance, provisions, and requirements must be included as part of the plan.

Mr. Kennedy discussed legal questions that could arise, such as changing from the initially-selected form of learning to another mode during the school year. He said concerns about the Family Educational Rights and Privacy Act (FERPA) may affect having a live-stream video feed from classroom instruction to in-home learning. Another concern is whether the General Assembly will waive the 170 student minimum days of attendance for the upcoming school year.

Mr. Kennedy said KSBA supports the American Academy of Pediatrics back-to-school recommendations for the overall health, well-being, and education of students, including in-person instruction as often and safely as possible and mitigating the risk of COVID-19 transmission as safely as possible. Concerns about staffing shortages may become an issue as retirements, leaves of absence, or being unavailable to work due to underlying health conditions or fear. Other concerns may be the ability to acquire cleaning supplies and masks for heightened cleaning standards, the ability to quickly procure instructional equipment as a result of shipping and supply-chain shortages, and the funding for these necessities.

With the General Assembly not being in session, the state of the economy and the downturn in economic activity and tax receipts, the most likely means to receive needed funding for K-12 will need to be provided from additional federal relief. Mr. Kennedy encouraged members to advocate at the federal level for relief in a timely manner.

The virus mitigation guidance for best practices or requirements to allow in-person learning is another point of concern. The inability to achieve social distancing at the recommended levels requires masks be worn at all times, which is a point of consternation for students, staff, families, and the overall community. Mr. Kennedy asked everyone to reach out to district leadership with concerns or input to make this work as best it can. With Kentucky being a diverse state, survey results have varied greatly.

COVID-19 liability for districts, school boards, and individual employees may be addressed in federal legislation with reasonable liability protection.

Standardized assessment and school accountability cannot be waived without USDE approval. Because the 2020-2021 school year is expected to be even more atypical, KSBA supports another waiver of testing for this school year and will continue discussion with the USDE, KDE, and the General Assembly moving forward.

Mr. Kennedy thanked the members for recognizing that public education is mandated by our Constitution and is essential to the quality and well-being of all Kentuckians, the economy, and all essential employees.

Mr. Campbell said every public district and worksite face unique challenges to ensure the health and safety of everyone. The guidance provided will be best practices that can be uniquely adapted to each school situation. Schools are places where communities gather, celebrate, encourage, and educate the next generation. It is critical that plans for reopening are made by each school and school district and that the voices of those who work closely with students play a large part in the final decision. He said interaction in a healthy and safe manner is crucial and believes in-person learning is the most effective teaching method.

Confusion surrounding the reopening of school falls into categories of resources, responsibilities, and health and safety issues. While many agree the most effective means is in-person learning, reality requires educators to service students in a variety of ways. Needed equity in resources includes access to technology and high-speed internet, nutrition and moral support, and curriculum resources to be successful. Mr. Campbell said resources will be needed for cleaning, sanitation, and personal protective equipment (PPE). He said teachers should not be expected to spend their money for materials and supplies while taking on additional teaching duties without compensation. Educators spend countless hours planning, creating materials, grading, assessing and providing feedback to students, monitoring halls, unloading and loading buses, having parent calls and conferences, and other duties as part of their normal routine in a regular school year. With COVID-19, educators will be asked to continue their regular routine but will also need to provide distance learning, monitor students before and after school due to extended schedules, give up valuable family time, conduct temperature checks, maintain logs, do contact tracing, and be responsible for sanitation efforts, among other duties. Teachers will be expected to perform extra duties without additional compensation, insurance, or protection. Clear definitions of an educator's workday, requirements for worker protections, and reasonable job expectations are critical moving forward.

Mr. Campbell said a lack of parent, educator, and student safety in communities will impact teaching and learning. As teachers are asked to step into an at-risk environment, communities should set a good example by embracing and following the recommended PPE suggested guidance. He said additional resources for mandatory testing and for workers impacted by COVID-19 will be crucial and asked the committee to work toward extending the protections provided by Senate Bill 177. Mr. Campbell said student attendance, relief from mandatory testing, and provisions for emergency leave for educators who are directly or indirectly impacted by COVID-19 are critical needs to address.

Dr. Flynn said the pandemic has affirmed the importance of schools for students' mental, physical, social, and emotional development and well-being; providing a safe environment; and the impact on the economy. With flexibility and funding being an important part, he advocated for more federal support as schools prepare to open. He agreed with Mr. Kennedy's assessment on logistics, personnel, flexibility, funding, and resources. He said many schools have exhausted their CARES funds in preparation for reopening.

Dr. Flynn said flexibility in instruction time for the school calendar should be a priority, given the potential of an in-person shutdown. He said schools greatly appreciate the relief provided in Senate Bill 177, and additional relief will be needed for this year, especially with multiple modes of instruction.

Calendar flexibilities and relief will be needed on the 170-day requirement in preparation for possible in-person shutdowns. Dr. Flynn said in-person instruction is more effective than non-traditional instruction (NTI) and said additional flexibility is needed for instructional minutes during the school days, logistics for social distancing, student arrivals and departures, personnel issues including the mental and physical well-being of staff, staff vulnerability, implementation of in-person instruction, expanded teaching, staffing shortages, additional workloads, and concerns of logistical and financial challenges during the reopening phases.

Dr. Flynn said temperature checks are a highly discussed topic due to the benefit vs. cost because scientific evidence indicates many young people do not present symptoms, including fevers. Logistical and financial challenges are also being weighed in the decision making. Other issues will undoubtedly arise moving forward, and flexibility among every educational entity will be important during this time.

Senator Wise commented classroom teaching during the first six weeks of a school year is important in developing healthy relationships with other students and highly encourages in-person classroom environments when possible.

Responding to a question from Senator Wilson, Dr. Flynn said statewide teacher shortages differ depending on the area of need, grade level, and location. Senator Wilson said Bowling Green is experiencing more teachers than available positions and requested district-specific statistics and data from KDE regarding teacher shortages.

In response to a question from Representative Tipton regarding student learning loss given the uncertainty of return to the classroom this fall, Mr. Kennedy said local districts are determining additional avenues as uncharted territories are navigated. He expressed superintendents' concerns about the loss of student learning and districts' plans to assess student levels moving forward. Mr. Kennedy said extra support will be given to local districts.

Senator Stivers said student safety and a quality education are priorities and questioned the results of distance learning vs. traditional instruction. Dr. Flynn said distance vs. in-person learning depends on the individual student's need for interaction. Schools are planning both remote and in-person instruction and are determining how to assess student needs and learning. Mr. Kennedy said standardized testing will return at some point and more accurate data will be provided as to the most appropriate teaching method.

In response to a question by Senator Higdon, Mr. Kennedy said funding from the CARES Act for grades K-12 was distributed by federal law based on a share of Title 1 funding, and the distribution is provided on KDE's website.

In response to a question by Representative Huff, Dr. Flynn said KDE is prioritizing its work with districts to insure Individual Education Plans (IEPs) are followed, but specifics have not yet been completed. In response to her follow-up question, Mr. Kennedy said all special-needs services will be provided. IEP students will be provided additional services through distance-learning instruction and services.

Responding to a question from Representative Bojanowski, Mr. Kennedy said federal or unpaid leave is approved through Dec. 31<sup>st</sup>. Additional funding for emergency paid sick leave and emergency FMLA with various circumstances will be requested for quarantined employees, and individual discretion will be used. Dr. Flynn said it is necessary to honor and respect the daily responsibilities of educators and their families as well as multiple needs for various services that may be required. He said educators are aware that a high-quality education and keeping students on task for required learning is a challenge that will involve decision-making from parents, counselor, teachers, and administrators. Mr. Campbell said flexibility, safety, and high-quality education must be efficient and effective for students.

### **Update on Restarting School Athletics**

Julian Tackett, Commissioner, Kentucky High School Athletics Association (KHSAA), reported the association's largest fundraiser, the Sweet 16 Basketball Tournament, was cancelled due to COVID-19. With sports being the top tool for dropout prevention, KHSAA has been communicating and working with schools to determine how to move forward at the local level. KHSAA is currently planning for fall sports as KHSAA remains optimistic a balance between playing sports and other concerns can be achieved. He said KHSAA will continue to be a good custodian of the best program to prevent dropouts and keep students interested in school.

Senator Wise said keeping an open dialogue as it relates to sports is important for student mental health with emphasis on achieving a common goal in a safe way. In response to his questions, Mr. Tackett said contracts for out-of-state travel must be reaffirmed with local boards of education as safety concerns are addressed. In a follow-up question, he said

contact versus non-contact sports and indoor versus outdoor sports will be a determining factor and adjustments will be made as the school year moves forward.

In response to a question by Representative Riley, Mr. Tackett said previous discussions have included all sports and adjustments must be made as needed.

### **COVID-19 AND SEEK Funding**

Kentucky Department of Education (KDE) presenters were Kevin Brown, Interim Commissioner; Robin Kinney, Associate Commissioner, Office of Finance and Operations; Kelly Foster, Associate Commissioner, Office of Continuous Improvement and Support; David Cook, Director, Innovation and Partner Engagement; and Chay Ritter, Branch Manager, Office of Finance and Operations.

In response to an earlier question by Representative Bojanowski, Mr. Brown said public health officials and teachers have expressed concerns regarding districts opening up with guidelines instead of requirements, making it impossible to implement social distancing within many areas of schools. Social distancing and masks rules will be required in common areas when social distancing is not possible. Many options are being considered among the districts, and Mr. Brown encouraged teachers to approach district leaders and local health departments. In response to a follow-up question, Mr. Brown said there is flexibility in addressing Senate Bill 1 safety concerns while at the same time meeting CDC guidelines for increased air circulation. According to Ms. Foster, guidance documents for logistics relating to COVID-19 were released on July 6<sup>th</sup> and are available on KDE's website. Senator Wise said Senate Bill 8 provided schools additional flexibility on the locking of doors.

Responding to a question by Senator Higdon, Ms. Kinney said two large amounts of funding was distributed under the Federal CARES Act. Grades K-12 received \$193 Million for ESSER funding and \$30 Million from the Governor's Emergency Education Relief Funds (GEERF), which are in the process of being distributed to local school districts. Ten percent of the ESSER funds was withheld to provide services from the KDE to all local school districts for virtual learning and professional development. The \$30 Million GEERF funds can be used for remote learning technology and increased food services costs. Ms. Foster said the primary funds have been allocated and are hopeful more funds will be approved in the future. Ms. Kinney said school districts received some CARES funds for child care operations at the district level from the Cabinet for Health and Family Services (CHFS). The Federal Emergency Management Administration may assist in PPE and sanitizing efforts.

Ms. Kinney said that through the Governor's Executive Orders, action by the General Assembly in Senate Bill 177, and KBE's waivers, all parties have worked to provide support and relief necessary for local school districts to meet the needs of students, families, local district staff, and communities across the Commonwealth. Senate Bill 177

provided emergency relief for school districts during the state of emergency declared in response to COVID-19, providing an unlimited number of NTI days allowing virtual or distance learning. As no one could predict how this ever changing and unprecedented pandemic would unfold, Senate Bill 177 allowed districts to wind down the school year and allowed for the funding structure to be temporary, explainable, flexible, predictable, verifiable, familiar, and to not incentivize or discourage decisions for in-person or remote instruction. KDE will work with the General Assembly during the 2021 Regular Session to tweak or modify the legislation as needed.

Ms. Kinney said that during school year 2021 KDE will be maintaining the same average daily attendance (ADA) related data choices that districts made for 2019-2020 and will temporarily “decouple” attendance driven participation and move to a participation model focusing on student engagement. The district calendar and attendance decisions will not be impacted by funding.

Although Senate Bill 177 did not extend to future school years, the bill allowed input from everyone involved in education on a daily basis and was thoughtful in allowing districts to wind down the school year after the pandemic.

At a special meeting of the Kentucky Board of Education (KBE) on March 18, KBE granted a blanket waiver for NTI regulations. This allowed districts who were currently participating in the NTI program to go through an abbreviated application process and explain how they would deliver quality NTI for the remainder of the 2019-2020 school year. KDE issued emergency NTI guidance for schools and districts.

Mr. Cook said prior to the COVID-19 emergency, districts used NTI for more traditional health and safety concerns, and NTI was capped at 10 days per school year. NTI days use a substituted ADA from the prior year. Districts were required to apply for NTI in the spring (120 days prior to the school year approved). During 2019-2020, 83 school districts used “regular” NTI prior to the COVID-19 emergency. In a regular year, NTI saves around 500 days of instruction that would be lost due to closure.

Mr. Cook said NTI uses the concept of participation to identify which students are engaged in instruction during NTI days. Participation measures the interactions between teachers and students in the same way presence is measured in the classroom. While it doesn’t replace grading, NTI measures if the students are participating in instruction. The quality of their participation is found in the grading, just as it is for students seated in the classroom.

During the COVID-19 pandemic, 5,640 NTI days were used to provide instruction to students. During the COVID-19 emergency in the spring of 2020, districts collected and submitted weekly district-level participation information to KDE based on participation information submitted by teachers at the local level. Participation rates were above 90

percent for the spring 2020 closure. For the 2020-2021 school year, all Kentucky public school districts have been approved for the NTI program, and many schools have shifted from a paper-based to a digital-based delivery approach. Many districts are using federal funds from the CARES Act to provide more devices and hot spots to students without internet access.

Students who are in-person will have their physical presence count as their participation. Students who are in an NTI situation, whether part-time or full-time, will have participation recorded by teachers using a variety of types of interactions, including video chats, phone calls, group chats, using google classroom, and submission of instructional packets for paper-based students.

Responding to a question from Representative Willner, Mr. Brown said mask wearing is a public health, KDE, and KBE expectation during the pandemic. Teachers will need to be creative and use their classroom management skills to deal with students not in compliance. While much of the effort can be taught at home or outside of school, the community must work together to ensure masks are essential when students are on a bus, walking inside the school, or when required in the classroom.

In response to a question from Representative Bojanowski, Mr. Brown said temperature checks are a frequently discussed topic. He said the Department of Public Health provided non-touch digital thermometers. Flexibility for temperature checks could include checks on the bus, as students exit the bus, upon arrival at the school, or upon entry to the school. While temperature checks are not fool proof, it is the best and most frequent indicator of illness. Mr. Flynn said the American Society of Pediatric Health will provide a report to determine changes in temperature checks since the beginning of the pandemic, and equipment and means will still be a logistical concern.

Responding to a question from Senator Givens, Mr. Brown said districts were able to convert NTI into a technology-based program instead of paper packets. The NTI hybrid model may come to a close with the end of the pandemic or it could be extended after the emergency. Long-term policy discussions will continue so preparations can be made to accommodate the unknown factors.

In response to a question by Senator West, Mr. Brown said KDE has a 16-item guidance document for schools. He said there won't be mask police but schools should follow the best public advice, remain 6 ft. apart; and do temperature checks. During the pandemic, KDE will follow the recommendations of public health officials to safely protect students and staff. KDE will act in good faith and give its best effort in implementing the expectations.

Responding to a question by Senator Thomas, Mr. Brown said KDE is partially headed in a direction to offer on-line classes in high school. He said many discussions



among various groups will include professional development days and be in the future for the time being. Remote instruction will have a place in education until a new normal can be achieved.

The next IJCE meeting will be August 18<sup>th</sup> at 10:30 a.m.

There being no further business before the committee, the meeting adjourned at 12:35 p.m.