

INTERIM JOINT COMMITTEE ON EDUCATION

Minutes of the 4th Meeting of the 2021 Interim

September 1, 2021

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Education was held on Wednesday, September 1, 2021, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Max Wise, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Max Wise, Co-Chair; Representative Regina Huff, Co-Chair; Senators Danny Carroll, David P. Givens, Denise Harper Angel, Jimmy Higdon, Alice Forgy Kerr, Stephen Meredith, Gerald A. Neal, Adrienne Southworth, Robert Stivers, Reginald Thomas, Stephen West, and Mike Wilson; Representatives Shane Baker, Kim Banta, Tina Bojanowski, Jennifer Decker, Jeffery Donohue, Myron Dossett, Mark Hart, Adam Koenig, Scott Lewis, C. Ed Massey, Bobby McCool, Charles Miller, Felicia Rabourn, Steve Riley, Attica Scott, Killian Timoney, James Tipton, Russell Webber, Richard White, and Lisa Willner.

Guests: Jim Flynn, Executive Director, Kentucky Association of School Superintendents; Eric Kennedy, Director of Advocacy, Kentucky School Boards Association; Will Hodges, Superintendent, Green County Schools.

LRC Staff: Jo Carole Ellis, Joshua Collins, Lauren Busch, and Maurya Allen.

Chair Wise welcomed members, special guests, and guest legislators to a specially called meeting of the committee. He briefly introduced some of the issues that schools are facing regarding mitigation of COVID-19 and legislative proposals to address those needs. He began with funding and attendance, noting that for schools who have needed to close for COVID-19 quarantine, it affects their number of instructional days and cuts into their available make-up days. In one district alone, there are over 400 students in quarantine due to eight students testing positive for COVID-19, and that has resulted in the need to close schools. We cannot eradicate or eliminate the threat, but we can manage it with common sense. He hopes legislation can be written that outlines localized metrics for local control and decision making, because a one-size-fits-all approach does not make sense. An example of a local model was the “Test and Stay” program being implemented by some schools in his district. Instead of quarantining the entire classroom, this program allows those who were exposed to take daily tests in order to stay in the classroom as long as they remain negative.

He pointed out that shortages of teachers and substitutes are also a critical issue facing schools. Temporary waivers should be considered to utilize emergency language already in statute to increase the number of available individuals for substitute teaching. These procedures will still be safe but will expedite the process for temporary certification and background checks. He also proposed the need to allow superintendents to utilize probationary candidates. In order to protect the workforce, there is a need to incentivize vaccination among teachers, staff, and eligible students. He emphasized that the legislature does not want to utilize mandates on school districts. Rather, they would prefer to allow local level control.

Jim Flynn, Executive Director, Kentucky Association of School Superintendents, spoke regarding the needs of schools as it relates to funding and to share the concerns of Kentucky's superintendents. They have been working hard to keep educational services in place, with an emphasis on in-person instruction, but in a way that protects everyone's well-being and reduces spread to lessen impact on local healthcare facilities. School superintendents need good data and evidence for guidance to navigate these complex decisions. A top priority for superintendents is funding stabilization. Low in-person attendance in the current school year will have a dramatic impact on next year's budget due to the way SEEK is calculated. This has driven some schools to close rather than record very low attendance. Regardless of attendance, schools will need adequate funding to provide in-person services to everyone in the 2022-23 school year. If superintendents can be guaranteed that their funding will be adequate next year, they will be able to effectively plan for the lower numbers experienced today. He requested an option to use 2018-2019 funding levels, as was allowed in the past, or even the 2019-2020 attendance data. He did point out that some districts may have had significant enrollment increases since then, so they should be allowed to apply for an exemption to increase funding.

In response to a question from Chair Wise, Mr. Flynn said superintendents do consider the impact of attendance on funding when making the decision to use an NTI day, but largely the lack of teachers, substitutes, and school bus drivers is more often what results in the cancellation of in-person learning. Schools need a mechanism to deal with individual schools in the district or individual classrooms in the face of staffing shortages.

Responding to a question from Senator Givens, Mr. Flynn said there is currently a great difficulty getting CDL-licensed bus drivers. Interested individuals are able to take the necessary training courses but cannot schedule tests for licensure. He suggested that schools may need to access other pools of already CDL-licensed drivers, such as city bus drivers. He also noted there are constraints on retired teachers that prevent them from coming back as substitutes. Retired staff are also generally more vulnerable to severe COVID-19 and fearful for their health by coming into classrooms right now. He suggested the schools need to mitigate learning loss in the short term and to look at how to recover learning loss in the future. Mr. Flynn suggested lifting constraints on pre-service and

student teachers to serve as substitutes by addressing background checks, which are a hurdle due to time, location, and cost. Responding to another question from Senator Givens, Mr. Flynn said pre-service teachers are those that are on a schedule that would allow them to substitute, but they do not have all their classroom hours yet.

Responding to questions from Senator Wilson, Mr. Flynn said schools are providing remote services to those students who are at home due to a positive COVID-19 diagnosis or in quarantine, but it is challenging. Teachers are in classrooms working with in-person students, covering classrooms as substitutes, and also remotely supporting students in quarantine or isolation. It is an incredible burden. If schools could get more teachers, it would improve the supports given to homebound students. Mr. Flynn also explained that NTI is different than virtual academies, in that NTI is used for the entire district to provide non-traditional instruction, and prior to the pandemic was largely used for weather-related closures. It is a useful tool for districts to have to respond to the pandemic, but the priority remains providing in-person instruction. Virtual academies are a remote learning option for individual schools or classrooms and could provide flexibility to districts wishing to create them.

Responding to questions from Representative Tipton, Mr. Flynn said current funding is based on Average Daily Attendance (ADA), but allowing for funding to be based on Average Daily Membership (ADM) and ADA combined, or for an exemption from recent years' attendance, might be desirable for districts. He also suggested including criteria for enrollment growth in the mechanism. Mr. Flynn further addressed Representative Tipton's questions, saying that as long as schools can respond as needed when there are not adequate staff to allow in-person instruction safely, they will be satisfied. That mechanism could be remote learning flexibility, limited use of NTI for the district, or a more targeted, classroom level tool.

Responding to a question from Representative McCool, Mr. Flynn said 140 districts have applied for virtual academies to offer families who wish to have a virtual option. These academies utilize a performance-based funding model and usually service middle and high schools; although, some schools are creating elementary level options during the pandemic. It is a riskier option because of performance based funding. If legislation addressed the funding issue by allowing the use of 2018-2019 school year ADA for next year's funding, that might help more schools establish virtual academies. At this time, when staffing is limited and students are receiving virtual instruction, schools do not have access to any funding exception.

Senator Neal commented that he appreciates the need for flexibility, but there is a great deal of uncertainty around the future of COVID-19 and funding concerns. He suggested that some consideration should be given to legislatively allowing more NTI days to give districts the flexibility necessary to deal with the uncertainty. Chair Wise answered that the committee may want to look at that, but there is not an appetite among legislators

for providing unlimited NTI. NTI can be abused and risks child safety. Senator Neal agreed that he does not advocate for unlimited NTI, but increasing the number of available days needs to be considered. Chair Wise said that NTI may be addressed in a special session but also can be considered in January during regular session as it was when the pandemic began.

Responding to a question from Chair Wise, Mr. Flynn said if the number of required school days is changed to hours of instruction, it would provide more flexibility by allowing districts to extend the school day by a few minutes to make up the time after the current period of COVID-19 intensity subsides.

Senator Stivers commented that some approaches from last year were not effective as evidenced by lower test scores, and they created struggles for working families. Historically, individual schools were allowed to petition KDE with an NTI plan that was customized for their district. The legislature needs to allow that flexibility again because there may also be a bad winter that schools will need to address using NTI days. Mr. Flynn agreed a one-size-fits-all approach will not work. Superintendents need to have the flexibility to make the decisions based on local context. However, he asked for more data because it is difficult to justify their decisions when there is not meaningful data from local, regional, and state sources. More clarity will help when combined with the immediate relief options discussed. He also asked for a framework in January for other potential variants based on what has been learned in the last 18 months. Senator Stivers agreed saying schools need to get through this semester, and then the legislature will reevaluate the dynamics in January for the spring semester.

Responding to a question from Representative Rabourn, Mr. Flynn said there is a need for consistency of messaging from state health agencies and a consistency of application of policies. Some schools are using innovated approaches, such as allowing proof of vaccination to delay or prevent the need for quarantine in the event of exposure or the use of testing. Not all schools know which options are available to them to address quarantine requirements nor do they have the resources necessary to implement something like a testing program. Additionally, local health departments are giving different advice than some doctors, creating an unevenness that is difficult for superintendents to navigate. There needs to be a uniform policy and more access to different options.

Representative Willner commented that real people's lives are at stake, and it is clear the legislature needs to take this seriously in taking action. There is a need for flexibility and stable funding, both to address equipment needs and staffing shortages, and to particularly address custodial staff shortages at a time when there is increased demand for sanitation. She asked if there had been much discussion of using a hybrid model, such as was used in Jefferson County and many other districts last year, to allow teachers to have smaller, more socially distanced classrooms while still providing in-person instruction. Mr. Flynn said there was some discussion among superintendents about the

effective use of hybrid models last year. It does allow for in-person instruction and reduces student density. Superintendents would not be opposed to having that tool as an option, but there is evidence that masking helps mitigate student density concerns. The choice to utilize a hybrid model is also influenced by the size and floor plan of the school buildings, community incidence rates, and the impact on families that would have to provide care for children on the days they are not in-person in a classroom.

Responding to a question from Chair Wise, Mr. Flynn answered there is no statewide data right now on the number of students in quarantine who are positive versus negative, but the overwhelming majority of those in quarantine are not positive. Additionally, it seems that those who are testing positive are getting COVID from the community, not from contact in a school setting.

The committee next heard from Will Hodges, Superintendent, Green County Schools, regarding their use of a “Test to Stay” program. With support from the Cumberland Health Department and Cumberland Family Medical practice, nurses and nurse practitioners have been assigned to Green County Schools to implement a strategy for testing in local school districts that has not been promoted statewide. This testing strategy is not easy, but it is worthwhile and is keeping students in classrooms. After the recent peak in case rates, the process for testing has become more streamlined and efficient. He did advise that schools wishing to adopt this strategy will need a good healthcare partner. Also, this program is not mandatory. Parents can still choose to quarantine students if they do not want them tested. The testing is also only offered to students who have a school-level exposure, not household/community exposure. In his experience, those students who were exposed at home tended to become positive.

The “Test to Stay” program works by identifying students who may have been exposed in school, following the CDC criteria of close contact, and allows those students to test daily for six days. If the exposed student remains negative, they are allowed to continue to attend school. Students are tested on days one through six, with the day of exposure as day zero. Weekends count towards the six days, however students are not tested on the weekend. If Saturday or Sunday would have been the sixth day, students are tested on the Monday following. Tests do not have to occur first thing in the morning so this allows for testing to be spread throughout the day. Students in the program test 24 hours apart so if they test at 10:00 a.m. on day 1, that is the time they test every day for the period of testing. While participating in the testing program, students must wear a mask in classrooms. Students who are not in the program are not mandated to wear masks but may if they wish. Out of the 1675 students in Green County Schools, so far 159 have participated in the program and 92 percent continue to be negative. This has allowed keeping those 146 students in school for in-person instruction. Most families have chosen to participate in this program, not only because it means the students have remained in school, but parents have not had to lose work or face the stress of finding alternative childcare. It has also illustrated that spread is not taking place at school as much as at home or in the community. So far

the “Test to Stay” program has drastically cut down on quarantines. Only those with household contact with COVID-19 have been required to quarantine, which is currently 79 students or 5 percent of the school population. Mr. Hodges credited the ability of the school to keep the number of students in quarantine low to this program. He also wanted to thank the healthcare partners for their assistance. While the school year has just started, things could change in a moment, but for right now this seems to be helping. He also echoed earlier superintendent concerns about staffing shortages.

In response to a question from Chair Wise, Mr. Hodges said there is no cost to families for participating in the program. The school is utilizing federal relief funds to pay for the program so that the district also does not experience a budget shortfall. Mr. Hodges said there were other counties using the same model program including Russell County.

In response to a question from Representative Rabourn, Mr. Hodges said they use the nasal swab test. Responding to a follow-up question from Senator Southworth, he said it is a rapid test which produces results in 15 minutes, so students only miss class time for that period of time. If the results are questionable, they are sent on to a nurse practitioner for follow-up and retesting. Mr. Hodges was also not aware of any risk of testing shortages, and healthcare professionals seemed to be comfortable with the risk of continued exposure should the student test negative for a couple of days before testing positive. This process so far has detected positives and prevented increased spread.

Responding to a question from Senator Givens, Mr. Hodges said Green County had not utilized any NTI days, and they are on their 22nd day of school. Responding to questions from Senator Carroll, Mr. Hodges added that the nurse schedules any symptomatic students, even those with negative tests, for a PCR test. He reiterated he does not know of any testing shortages currently. Chair Wise commented that he knew the state had approximately 80,000 kits right now, but did not know how long that reserve would last if all schools implemented “Test to Stay” or when they could get more tests if they needed more.

In response to questions from Representative Riley, Mr. Hodges said it only takes 15 minutes to perform the test per student. In response to a question from Representative Fleming, Mr. Hodges said Green County has one nurse per building of approximately 500 students. A ratio like that should be able to accommodate even the larger districts in the state, because testing is spread throughout the day. It would be critically necessary for schools wishing to implement “Test to Stay” to develop a partnership with a local healthcare agency to read the test results. There are also waves of infection that the school will experience, and it becomes very tiring for the staff during those busy periods. Representative Fleming said Jefferson County would have to ramp up the number of nurses, because currently many school buildings share a single nurse.

Responding to questions from Senator Higdon, Mr. Hodges said there is daily testing of students with symptoms and parents are notified to provide permission for testing. However, less than two percent of the total student population is currently positive for COVID-19.

Chair Wise thanked Mr. Hodges, and said he hoped that this kind of outside the box thinking could provide movement forward for districts.

Eric Kennedy, Director of Advocacy, Kentucky School Boards Association, spoke about concerns school board members have regarding COVID-19 and possible solutions to be considered by the legislature. Largely, school board members agree with the concerns raised by school superintendents and the suggested solutions. During a recent regional meeting, the largest concern and driver of school closures was the lack of adults in schools to allow them to operate safely. Twenty-three districts have already paused in-person learning and 9 have used NTI for some of their closed days. He expects that number will continue to grow. School board members have concerns about using NTI, though, before the winter weather comes. Retention of staff is a concern, as some school board members have taken on the burden of contact tracing, which some teachers and staff have been performing above and beyond their existing duties. Contact tracing is an exhausting job and has led to many heated conversations between school staff and families at a time when tensions are already too high. This is driving employee burnout and some school staff are walking away, further compounding the staffing crisis. Many schools are down to one substitute per school so anything that can help increase numbers of teachers is welcome by school boards.

He said clarifying that “Test to Stay” is an approved policy would be helpful, but urged legislators and others to also help schools find the necessary healthcare partners to make the program work. The State Department of Health has indicated fully- vaccinated individuals do not have to quarantine without symptoms, but schools are wary to act on that without more explicit recommendations. This is a guideline that could encourage more vaccinations among bus drivers, custodians, and food service staff. If a school could reach 100 percent vaccination among teachers and staff, it would help prevent quarantine of staff and closure of schools. There is a critical need to promote vaccination efforts and increase the vaccination rate, even if this is not addressed legislatively.

Representative Bojanowski said as a teacher she hears students expressing concerns about their own safety. Also, in her school, they would need more than one nurse for “Test to Stay,” because the nurse on staff already has a full workload apart from additional COVID-19 testing and contact tracing. She worries about parents sending students to school even though they are positive or have a sibling or family member who is positive. Front line teachers and healthcare workers are feeling pressure and burnout. They are scared for themselves and vulnerable family members. She provided members with feedback from teachers, those who are teaching asynchronous virtual and in-person classes,

and those who are concerned about using their own sick leave for quarantine or isolation. She urged members to consider allowing for school closures versus district-wide closures or the development of hybrid models. All the teachers she spoke with support a mask mandate, because they are concerned if that decision is left to local school boards it will be politically motivated instead of motivated by true health concerns. She stressed that children under 12 cannot be vaccinated and are only protected by masking, but there is general opposition to a vaccine mandate for teachers. She closed by suggesting schools be considered as vaccination sites for children when the vaccine becomes available for those under age 12. She has memory of her school performing such vaccinations when she was a child, and the program would have support from families.

In response to questions from Senator West, Mr. Kennedy said it may be a case where the state health department or local health departments would have the authority to create and implement a “Test to Stay” program for schools without needing to modify statute. However, the availability of “Test to Stay” is not in the guidelines for quarantine from the Department for Public Health, so clarity and explicit recognition of that program as an option would help local school districts and health departments relieve doubts.

Responding to a question from Senator Thomas, Mr. Kennedy said it would be problematic to incentivize vaccination by tying funding to vaccination because it is not practical to create a mandate that would be hard for schools to comply with, and there are laws in place that prevent the use of coercive or discriminatory policies regarding health mandates.

In response to questions from Senator Southworth, Mr. Kennedy said the number of hours is specified in statute and funding is tied to meeting the statutory requirements for instructional hours. There is no definitive number of staff necessary for a school to be open, but superintendents use their experience to determine when the number of staff is too low for adequate student supervision and safety. Public health criteria are outside his area of expertise, and he would defer to the health officials in determining what measures might be able to change regarding quarantining of students and staff. Superintendents and school board members are not health experts and are relying on those that are to issue the guidance documents used for testing, vaccination, masking, and quarantine decision making.

Responding to a question from Representative McCool, Mr. Kennedy said the restrictions that were relaxed previously to allow staff such as bus drivers and retired teachers to return is being used to its maximum ability, but there are limitations from the teachers retirement system and the federal government that prohibit much more relaxation. The need to allow for retirees to serve as substitutes is high, and anything that can be done to make it easier for retirees to come back as substitutes would be supported by school boards.

In response to a question from Representative Rabourn, Mr. Kennedy said every district is different in determining the percentage of absentees that results in a school closure. Typically, that is around 85 to 87 percent attendance. However, if the previous year's average daily attendance (ADA) was not used for funding calculations some schools may consider staying open when they drop below the 85 percent threshold since it would not negatively impact funding in the upcoming school year. The proposal to permit that has support from the school boards association. Mr. Kennedy also said most superintendents make the decision to use an NTI day based on how many days have already been used, whether students or families just need a break, and based on what the probabilities of needing NTI for inclement weather may be for their area. Many schools are hesitant to use NTI days now that they may need for bad weather in the winter. In closing, he reiterated the need to allow flexibility for these times of rapid change. However, there needs to be stability from the state to allow for uniform application of existing guidance. One example is in the guidance surrounding contact tracing, where the guidance is consistent but the process for application is imprecise because of the challenges facing staff in the real world classrooms. He urged everyone to remember that school staff are doing the very best they can in these challenging times.

Chair Wise thanked everyone for their testimony, questions, and comments. He encouraged all members to continue collecting suggestions and bring that input to members for inclusion in possible legislation. With no further business to come before the committee, the meeting adjourned at 3:07 p.m.