

INTERIM JOINT COMMITTEE ON EDUCATION

Minutes of the 6th Meeting of the 2021 Interim

November 15, 2021

Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Education was held on Monday, November 15, 2021, at 11:10 a.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, Melinda Gibbons Prunty, Steve Riley, Attica Scott, Killian Timoney, James Tipton, Russell Webber, Richard White, and Lisa Willner.

Guests: Erin Klarer, VP of Government Relations, Kentucky Higher Education Assistance Authority; Chad Collins, General Counsel, Kentucky High School Athletics Association; and Julian Tackett, Commissioner, Kentucky High School Athletics Association.

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

Approval of Minutes – October 5, 2021

Following the welcome of special guests from Co-Chair Huff's district, Senator West made a motion to approve the minutes of the October 5, 2021, meeting. Representative Timoney seconded the motion and it passed by voice vote.

Save the Children

Senator Stivers welcomed and introduced Mark Shriver, Chief Strategy Officer, Save the Children. Senator Stivers spoke to the history of the program in Kentucky and the legacy of its impact on education in Eastern Kentucky. For every dollar contributed by the state to the Save the Children program, the organization provides a \$14 match from fundraising and private donations.

Mr. Shriver said the focus of the Save the Children program is on early childhood literacy as the best intervention for the investment. Started in Kentucky in 1932, it was a precursor to the federal food program, and started as a food service. While the program still provides snacks and meals, Save the Children is primarily a literacy and numeracy intervention program that takes place in the classroom and during after school programming.

Madison Lundsford, 6th Grader, Whitley Independent Schools, spoke to her personal experiences in the program during 3rd grade, both in the classroom and after school. The Save the Children program provides healthy snacks to students and reading instruction, activities, and quizzes to evaluate skill growth. The summer program includes activities, more intense interventions, and more growth assessments. Literacy games to improve spelling, math skills, and reading are popular among the students. Even facing restrictions during the COVID-19 pandemic, the program continued to provide interventions in modified ways.

Alissa Taylor, Kentucky State Director, Save the Children, said she has been honored to work for Save the Children and to give back to her region. The program is a true partner in education and students are selected based on their performance below grade level on assessments and their inability to qualify for other intervention programs. The program has also expanded to provide support for prenatal through 5th grade children in reading and math. Employees are district employees, trained by Save the Children, and trainings are open to all teachers in the district. The importance of reading at grade level by 3rd grade is well documented as a marker for life-long success. Save the Children instructors also work with families and pregnant mothers, even reaching out via Zoom during the pandemic, to provide assistance and instruction. The tests and quizzes performed as part of the program validate its success and prove student growth. Data has shown the program to have a profoundly positive impact on students, with those participating during the pandemic seeing an average of two months of growth in reading as opposed to learning loss witnessed among students who did not receive interventions during the pandemic.

Heather Stewart, Instructional Coach, Whitley County Schools, stressed that creativity was key to the program's success during the pandemic. Program administrators worked with school districts to distribute materials and activities, including books, daily activity sheets, toys, games, and reward incentives to families. Ms. Stewart said she has worked in the classroom, as an instructional coach, and as a tutor in the Save the Children program. Currently, she is the program coordinator in her school, as well as a coordinator for other intervention programs. Save the Children makes a daily impact. In order to address literacy of children before they attend school, Save the Children employees work with pregnant mothers and families, even during the pandemic via video calls, to teach literacy interventions that can be used in the home and provide materials such as books and literacy games. Families were excited to receive their interventions because they were in areas without internet and lost human connection during the pandemic. Ms. Stewart said

Save the Children asks what the schools need and finds the solutions, unlike some grant programs that dictate what must be done. Mr. Shriver added that the program is working hard to expand to include math and numeracy interventions. The program has bipartisan support from governors and the legislature, united in the effort to get students up to grade level and create a foundation for future success.

Co-Chair Huff said she has witnessed this program in action in Whitley County. Data guides instruction and is put into practice to create a great environment for students who would otherwise be missed. The program also offers excellent nutritional supports for children and families.

Responding to a question from Representative Bojanowski, Ms. Taylor said many of the schools utilize classroom level supports, not only one-on-one interventions, and the same growth rates were witnessed in those cohorts that only receive classroom level programming.

In response to questions from Representative Tipton, Ms. Taylor said the program primarily uses interventions, not tier one instruction, although there is some of that used. Mr. Shriver said the focus of the program is mostly on rural areas that do not have the civic infrastructure of large cities. The program has done limited expansion into urban settings, but there is plenty of need in rural Kentucky at this time. Save the Children does not want to be everything to everyone; instead, they want to stick to what they do well and keep helping in those districts.

In response to a question from Senator Southworth, Ms. Taylor said Save the Children works alongside other programs such as FRYSCs, HANDS, and Read to Achieve. Also, participants in the Save the Children program are typically those who would not qualify for the other programs. Ms. Stewart added that she works as a coordinator to ensure that all students who need assistance can get it. All the students that qualify for a program such as Read to Achieve, are placed there, but there is limited availability. Those that would otherwise be left out are able to be placed into the Save the Children program. This means the most children are served by best utilizing resources and reducing redundancy.

Responding to a question from Representative Baker, Ms. Stewart said there are suggested books for each reading ability level, and students are allowed to choose from those curated collections based on their interests and reading level. Additionally, Save the Children provides books to the school libraries and to homes based on what topics and authors are popular with children.

Responding to a question from Senator West, Ms. Stewart said there is training for Save the Children staff that is open to parents and other teachers in the schools. This helps parents recognize key developmental milestones and gives them skills for supporting literacy in the home. Instructional coaches in the schools oversee implementation of the

program. Mr. Shriver reiterated that the staff in schools are employees of the school districts.

Responding to a question from Senator Meredith, Ms. Taylor said typically the students in Save the Children programs are not the furthest behind, therefore they do not qualify as a critical need according to some other programs' criteria. Ms. Stewart added that some participants would not qualify because they are not receiving special education services, but they may struggle because of a poor home environment. In her school, Read to Achieve can only provide for 30 students, but there are far more who need assistance. Save the Children helps by providing for 90 additional students who would otherwise be left to struggle.

Name, Image, and Likeness (NIL) Legislation

Bart Hardin, Director of Government Relations, University of Kentucky, said the university has been working on rules for name, image, and likeness (NIL) compensation for student athletes for many years and are grateful for the space to work on it with legislators. Ideally, this is a topic that would be addressed by Congress so that all states are on a level playing field; however, until that happens, the universities and colleges are operating under an executive order from the Governor that allowed the school year to begin with some basic ground rules for all Kentucky college athletes. A partnership has been formed among Kentucky's comprehensive universities, and representatives were present from those universities to present proposals for legislation.

Shannon Rickett, Assistant Vice President of Government Relations, University of Louisville, thanked the members for the opportunity to work on this legislation and provide the opportunity for student athletes to earn compensation for the use of their name, image, and likeness.

Angela Curry, General Counsel and Vice President for Legal Affairs, University of Louisville, briefly outlined a proposal for legislation that would do three things: allow students to earn compensation, place reasonable restrictions, and allow for university immunity.

William Thro, General Counsel, University of Kentucky, said one of the key requirements for universities is the flexibility to impose restrictions. He said they proposed allowing universities to define those requirements, rather than delineating them in legislation, thereby making them more difficult to change as needs change. An example of a reasonable restriction would be the disclosure of any NIL contracts to the university to be vetted in regards to 'pay-to-play' violations and to ensure the contracts do not interfere with student participation in team activities, such as missing practice to sign autographs. He also suggested a non-discrimination provision and a mandate for some level of financial literacy so athletes are aware of the impact NIL contracts could have on their scholarships and tax requirements. Some student athletes will have the opportunity to make a great deal

of money very quickly and may not have the proper understanding of tax laws. Universities also want to be insulated from breach of contract lawsuits regarding grants and scholarships, as well as other lawsuits that may arise.

Chair Wise said this is a rapidly evolving subject and agreed that the National Collegiate Athletic Association (NCAA) should have taken a nationwide stance. Concerning the proposed legislation, he asked if it would provide a framework for flexibility to protect both the student athletes and the universities. Ms. Curry said it would by allowing universities to delineate their own reasonable restrictions. Mr. Thro agreed that universities are already navigating unanticipated situations and he hopes that the legislation will continue to allow that flexibility. He also suggested that as young people are getting into complex agreements, it may be necessary for the legislature to revisit the Revised Uniform Athlete Agents Act, which was not part of the NIL legislation proposal, in order to best protect students.

Rachel Baker, Executive Associate Athletics Director for Compliance, University of Kentucky, said athletic compliance is difficult to navigate at this time, but maintained the need to keep NIL contracts from being used as recruitment tools. She has been working with the NCAA on NIL topics for at least 15 years, so while the topic is relevant and swiftly changing now, it is not new. She said it was always apparent that the revenue-generating sports players were likely to see the greatest opportunity to benefit from NIL contracts, but there was a hope that other Olympic sports and women's sports would have opportunities as well. Currently, men's basketball and football are leading in terms of compensation from NIL contracts; however, the third most active has been women's volleyball and a women's track athlete has benefited as an internationally recognized TikTok star. Ms. Baker reported all sports at the University of Kentucky have had at least one athlete take advantage of this opportunity.

Matt Banker, Associate Athletic Director, University of Louisville, said he was excited about the opportunities that have already come into place, especially by enterprising student athletes who are working to elevate their personal brands. Many students are taking advantage in the social media sphere as influencers; however, he cautions that students need more financial literacy to understand the contracts they are signing.

Matt Roan, Vice President and Director of Athletics, Eastern Kentucky University, said he appreciated the opportunity to have flexibility to determine the impact NIL contracts will have at smaller schools by allowing them to adopt their own rules.

Responding to a question from Representative Massey, Mr. Thro said the bill would hopefully contain a reaffirmation of existing immunities. Certainly, if students enter into an agreement and the contract is breached, the students should have the right to redress.

The request for university immunity in the bill would be in regards to the universities being sued.

In response to a question from Senator Stivers, Ms. Banker said there were 17 year olds participating in college athletics and therefore eligible to enter into NIL contracts. Senator Stivers said that it may be necessary for the legislature to consider that and what will happen to younger students whose parents may sign contracts for them in hopes that someday they will be able to capitalize on them.

Responding to questions from Senator West, Mr. Thro said the universities already have the authority to allow these contracts under executive order, but it would be helpful for the legislature to codify into law that the students have a right to compensation, that universities have the authority to set conditions around NIL contracts, and to protect universities from litigation as is already allowed in other instances. This would also standardize practices across the state and allow for interstate comparisons and standardization, as many other states are also setting forth NIL contract language in their statutes.

Representative Koenig commented that it was understandable to desire a single standard from the federal government; however, at recent National Conference of State Legislatures (NCSL) meetings, it was affirmed that the authority to allow or prohibit NIL contracts, and to set forth standards regarding them, belongs to the states. Many state representatives are reluctant to cede that authority to the federal government, especially as what is needed by Kentucky universities may be different than other state universities.

In response to questions from Representative Timoney, Ms. Baker said federal legislation would help recruiters who travel nationally know the standards, as well as parents and students who may be confused by various state laws and uncertain of the differences. Consistency would help ensure compliance as well. Mr. Banker said it was necessary to focus on what can be done at the state level now, rather than wait for a federal legislative solution. Mr. Thro said there has been discussion in Congress about the need to provide a nationwide standard, but there is disagreement on what that standard would look like. In regards to the ‘reasonableness’ provision, Ms. Curry said they had used the executive order as a guide and instituted common sense prohibitions such as no promotion of alcohol, sex, illegal goods or services, or infringement on university trademarks. Representative Timoney commented that the legislature needs to consider this topic carefully because there may be implications for high school students and a need to educate parents about when and how to hire a lawyer to negotiate these contracts.

Chair Wise did clarify that the proposed legislation should deal only with current and future student athletes, not make allowances for former athletes seeking royalties or retroactive compensation.

School-Based Decision Making (SBDM) Council Legislation

Senator Schickel was present with Davonna Page, President, Kentucky School Boards Association, and Sally Sugg, Superintendent, Shelby County Schools to discuss legislation addressing school-based decision making (SBDM) councils. He has worked on this legislation for many years and some version has passed out of the Senate Standing Committee on Education for the last three years. He said there is extra urgency this year to address SBDMs in light of the discussions surrounding curriculum decision making. Ms. Page said the school system is the responsibility of the whole community and board members are elected as part-time citizen lawmakers, indicating that all citizens should have a voice in the process of educating the children in their communities. Unfortunately, key aspects of that oversight were moved from board members to SBDM councils, and there is disconnect between the groups that leads to a lack of transparency and accountability.

Proposed legislation would give superintendents the hiring authority for principals after consulting with the school council and would give superintendents authority for curriculum planning and alignment. Curriculum should be more aligned across schools and districts as well as with the state standards. This would require more collaboration between all stakeholders, including parents, teachers, students, and staff.

Dr. Sugg said ultimate responsibility for schools does fall to school boards and superintendents. As school boards represent the community, constituents reach out to board members before reaching out to SBDMs, but often those concerns are not within the authority of the board to address. SBDMs should serve like a school board to receive concerns from parents, but do not function like that in practice. The highest performing school districts and schools use a collaborative approach between SBDMs and school boards, and those districts should be evaluated to create a standard across the state. There also needs to be more collaboration with the local business communities, which are not represented on SBDMs. When alignment is lost, it becomes difficult for students, especially the highly transient population, and results in learning gaps. Eric Kennedy, Director of Advocacy, Kentucky School Boards Association, said as this topic has come to the forefront of public awareness, a legislative solution is necessary, and the KSBA looks forward to working with the legislature during the upcoming legislative session.

Representative Massey said he is not opposed to local control, but school board members are elected and responsible to their constituency while SBDM positions are often difficult to fill. Also, in the event of conflicts between SBDMs and school boards, superintendents have to walk a fine line, so it is time to make some changes to the structure to improve the system. In response to those parents who claim they need SBDMs to have a voice, he said school board meetings are public and are the opportunity for parents to have a voice in the decision making process.

In response to a question from Representative Bojanowski, Senator Schickel said ultimate responsibility for principal hiring and curriculum decisions would fall to the superintendent after consulting with SBDMs under his proposal.

Representative Decker said citizens are concerned about SBDMs and want to know who is in charge in schools. Parents feel that their voice depends on having a strong parent representative on the SBDM council in their school; otherwise, it becomes a token position to simply approve decisions made by someone else. Standardization among the schools needs to happen so all children have a quality education.

Representative Timoney commented that SBDMs were created with KERA, and it is now time to reevaluate that system and make changes. There are examples of SBDMs that are doing well and those that are doing very little, and reform to the system will make it better for a new generation.

Responding to a question from Senator Thomas, Senator Schickel said parents do serve on school boards as well as on SBDMs, but the unique aspect to school boards is that they are elected public officials because the public needs a say in how schools use taxpayer money. He feels it is best for the elected school board to have greater authority. Ms. Page added it is not the intention of the school boards to cut parents out of the process but to make the lines of communication and decision making clearer.

Senator Givens commented that as some form of legislation has passed through the Senate on many occasions, this may be the time to make it a priority to give it time to complete the process through the House chamber and make the necessary revisions to the SBDM structure that clearly have been discussed for many years.

With no further business to come before the committee, the meeting adjourned at 1:01 p.m.