

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

Minutes 2018 Interim

August 9, 2018

Call to Order and Roll Call

The Program Review and Investigations Committee met on Thursday, August 9, 2018, at 10:00 AM, in Room 131 of the Capitol Annex. Senator Danny Carroll, Chair, called the meeting to order, led the audience in prayer and the Pledge of Allegiance, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Lynn Bechler, Co-Chair; Senators Perry B. Clark, Wil Schroder, and Reginald Thomas; Representatives Chris Fugate, Adam Koenig, Ruth Ann Palumbo, Steve Riley, Rob Rothenburger, Arnold Simpson, and Walker Thomas.

Guests: Bill Buchanan, Office of Teaching and Learning, Division of Program Standards, Kentucky Department of Education; Judge Roger Crittenden, Chair, Joel Griffith, panel member, Steve Shannon, panel member, Elisha Mahoney, Executive Staff Advisor and Acting Director, Child Fatality and Near Fatality External Review Panel; and Brad Holajter, Executive Director, Justice and Public Safety Cabinet.

LRC Staff: Greg Hager, Committee Staff Administrator; Chris Hall; Colleen Kennedy; Van Knowles; Dr. Bart Liguori; Jean Ann Myatt; Sabrina Olds; William Spears; Shane Stevens; Joel Thomas; Richard Schufelt, Graduate Fellow; and Kate Talley, Committee Assistant.

Minutes for July 7, 2018

Upon motion by Representative Simpson and second by Representative Rothenburger, the minutes for the July 7, 2018, meeting were approved by voice vote without objection.

Selection of Senate Study Topics

Senator Carroll said that the Senate majority proposes that the committee study the contracting procedures, current outside contracts, and protections in place to avoid undue influence in awarding of contracts in the Office of the Attorney General. Senator Schroder moved to adopt the study topic, Representative Rothenburger seconded, and the topic was adopted by roll call vote.

Senator Thomas said that the Senate minority is satisfied with today's presentation on preschool and full-day kindergarten as its study topic.

Presentation of LRC report *Preschool Program Review And Full-Day Kindergarten* by Office of Education Accountability (OEA) Staff

Ms. Olds said that the report has 15 recommendations and 22 major conclusions. The major takeaways from the study related to preschool are:

- Opportunity has increased, but enrollment has not
- Full utilization has different interpretations
- Districts think they are serving more students than they are
- Districts spend over two times the amount they receive from the state preschool grant
- Funding fluctuations make it difficult for districts to plan ahead
- The preschool program in Kentucky is effective

The major takeaways from the study related to preschool are:

- Most districts provide full-day kindergarten
- The additional cost to the district of providing full-day kindergarten varies
- Full-day kindergarten is associated with higher 3rd grade KPREP [Kentucky Performance Rating for Educational Progress] proficiency rates

Ms. Olds gave the history of state appropriations and changes in eligibility criteria for the preschool program, which increased over time from 130 percent of the federal poverty level to 160 percent. Despite increases in eligibility, the 19,182 preschool students served in 2017 was lower than the number served in 2006.

In 2002, districts received \$2,505 from the state per at risk student. In FY 2016, districts received \$4,682, which was the highest annual amount and \$500 more than in FY 2017. According to the OEA survey, districts' per-pupil preschool cost for FY 2016 was \$9,302: approximately \$6,200 for regular preschool education, \$2,000 dollars for special education services, and \$1,000 for transportation.

Recommendation 2.3 is that the Kentucky Department of Education (KDE) should recommend that the Kentucky Board of Education (KBE) allocate a portion of preschool funds to districts that transport preschool students.

After passage of the Kentucky Education Reform Act in 1990, the General Assembly added provisions in subsequent budgets that districts must first "fully utilize" Head Start funds before enrolling students in the state-funded preschool program. "Full utilization" is not defined in statute or regulation.

Preschool must provide a minimum of 2.5 hours a day for 4 days a week, provide breakfast or lunch, and have a 10 to 1 student to staff ratio. Sixty-eight districts provide a full-day preschool schedule 4 or 5 days per week.

Recommendation 3.2 is that KDE should provide to the General Assembly, before the 2018-2019 school year, a district-level analysis of the potential cost of increasing preschool enrollment of 4-year-old students.

Three-year olds qualify for state-funded preschool if they have an identified special educational need and do not qualify for preschool based on income. In 2016, 5,519 3-year-olds were enrolled. Of the 14,232 4 year-olds enrolled, 82 percent qualified for free or reduced price lunch, 29 percent qualified for special education services, and 8 percent were limited English proficient (LEP).

Recommendation 3.3 is that school districts, with support and guidance from KDE, should complete a needs assessment analysis in order to determine whether the educational needs of preschool-aged limited English proficiency students are being met and to explore possible resources that may assist to better meet the needs of these students.

Dr. Liguori said that the P2R evaluation is KDE's process for monitoring regulatory compliance by districts. A finding on the P2R indicates that a district is not in compliance with a regulation. Of the 142 districts that have received a P2R evaluation, 71 districts received at least one finding related to a district's responsibility to conduct an annual self-evaluation of their preschool program. The most common finding was related to the district's obligation to monitor the success of participating children as they progress through the primary school program.

Recommendation 4.1 is that KDE should ensure that all districts complete an annual preschool evaluation that meets and fulfills the requirements outlined in 704 KAR 3:410, sec. 9.

The OEA survey of district superintendents asked what percentage of eligible children they thought their districts were serving. In 98 districts, the respondent said that more than 75 percent of students eligible for preschool were being served. In practice, three-quarters of districts served less than half of eligible students through preschool alone. Statewide, 60 percent of preschool-eligible children were served by either preschool or Head Start in school years 2014 to 2016. The percentage of students served in each county ranged from 38 percent to 100 percent.

Recommendation 4.3 is that school districts, with support and guidance from KDE, regional training centers, and the Governor's Office of Early Childhood, should review, and where necessary revise, their recruitment strategies to increase the enrollment of

children eligible for state-funded preschool in order to more fully comply with 704 KAR 3:410, sec. 5.

Kindergarten readiness is measured by the Brigance Screens III. In school year 2017, 50.1 percent of students entering kindergarten tested ready. In districts that offered close to the minimum number of hours, 42 percent of students tested ready for kindergarten. In districts that offered 16 or more hours of scheduled preschool time each week, 55 percent of students tested ready.

The Brigance Kindergarten Screens III was standardized based on a sample of children representative of the United States. The sample is not representative of Kentucky children.

Recommendation 4.4 is that if KDE continues to use the Brigance Screen III, it should recalibrate the criterion/standard for readiness based on data gathered in the initial years of its use as the common screener in Kentucky.

Recommendation 4.6 is that KDE should engage in a longitudinal assessment of the relationships between kindergarten readiness, KPREP, and other indicators of academic success.

Taken as a whole, the results of OEA's evaluation of the state-funded preschool program leads to Recommendation 4.7, which is that KDE should conduct a full and complete evaluation of the state-funded preschool program at least every 5 years beginning in 2020. The evaluation should be provided to KBE and to the General Assembly.

Ms. Olds said that the two basic questions for the kindergarten part of the study are the number of districts providing full-day kindergarten and the additional cost districts bear to provide the additional half-day. As of the 2017 school year, six districts offered half-day kindergarten, four districts offered full and half day, and 163 districts provided full day. Based on the results of the OEA survey, districts spent more than \$194 million on kindergarten in FY 2016: nearly \$161 million on salaries, nearly \$17 million on benefits, and nearly \$17 million on special education. There were 49,110 kindergarten students, so the expenditure per pupil was nearly \$4,000.

A logistic regression model indicates that students who attended full-day kindergarten were 1.08 times more likely to score proficient or better on the 3rd Grade KPREP reading assessment and 1.12 times more likely to score proficient or better on the math assessment than students who attended half-day kindergarten.

The OEA report has seven recommendations that were not discussed in detail in the presentation.

In response to questions by Senator Carroll, Ms. Olds said the numbers regarding preschool do not include private centers. The report distinguishes between private and public preschool programs.

Senator Carroll said most school districts do not have funding or facilities to offer full-day preschool. Even if they did, it would close private businesses. There is disconnect between moving to full-day public preschools and state efforts to improve private preschool facilities. Speaking as someone who runs a private care facility, he said quality is very important.

Mr. Buchanan said early childhood education is a mixed delivery system; both private and public programs are needed. Full-day preschool is associated with higher Brigance scores, which suggests full-day quality matters. KDE is using some state funding to invest in public/private partnerships, which is promising.

Senator Carroll agreed that this is promising. He said his center serves 130 children. He is concerned that the OEA report focuses too much on children being in a public school environment.

Senator Thomas said that this is a critical issue for the state. In response to his questions, Ms. Olds said that she will provide information regarding state funding for FY 2018 and FY 2019. She will ask the co-chairs of the Education Assessment and Accountability Review Subcommittee whether they will allow allocation of staff time to determine the optimal cost to provide full-day preschool for 4-year olds. She said that in the past KDE may have done projections of costs. Mr. Buchanan said that he thought the appropriation was \$84.5 million for each upcoming fiscal year.

In response to questions by Representative Bechler, Ms. Olds said responses to a question on the OEA survey addressed the question of why enrollment has not increased. Respondents mentioned parents not wanting to send their children to school before kindergarten (126 districts); children who were eligible were enrolling in Head Start (118); children were attending private preschools, YMCA programs, and nonpublic schools (101); some children were enrolled in child care assistance programs (68); full-day preschool was not being offered in the district (64); and transportation (26). She said that districts spending twice as much as the state funding they receive is not related to the perception that districts are serving more students than they actually are. Districts mostly did a great job completing surveys. Financial reports were not used because many districts were miscoding data. Special education is an area for which funds were likely understated. Dr. Liguori said there was follow-up between OEA and districts to clarify questionable survey responses. Ms. Olds clarified that breakfast or (not “and”) lunch is to be provided. She will confirm that there should be no cost for the two districts that contract out with the Head Start program if no students enroll. She said LEP students are children whose first language is not English, not just immigrants. Many districts have not completed the annual

preschool evaluations required by law. P2R reports were used when districts did not provide an annual report. Mr. Buchanan said the evaluations are done over 5 years and require surveys of parents and staff, participation rates, and tracking the success of preschool students as they progress through the primary program. Ms. Olds will provide a list of districts that have not complied with statute and completed the annual preschool evaluation.

In response to questions from Senator Thomas, Dr. Liguori said the report focused on the kindergarten readiness screener, not the rate of increase for kindergarten readiness. Ms. Olds said the report focused on children who went to preschool exclusively and compared those with other cohorts for kindergarten readiness. KPREP was not taken into account. The report has information on kindergarten readiness broken down by group. She will provide copies of the extra slides prepared for the presentation.

In response to a question from Senator Carroll, Dr. Liguori agreed that private child care facilities have higher kindergarten readiness scores. Ms. Olds added that the majority of children in private child care facilities come from relatively higher income families and preschool is meant for children who qualify for free or reduced priced lunch.

In response to a question from Representative Koenig, Ms. Olds said KDE has been more aggressive in enforcing districts to comply with requirements. Mr. Buchanan said the state participates in Kentucky All STARS, a rating and improvement program that is supported with federal funds. This creates an incentive for districts to improve reporting to participate in the system and achieve higher STAR levels. Mr. Buchanan said that he is unaware of negative consequences for not meeting reporting requirements. Representative Koenig said that there should be consequences.

Senator Carroll said the major takeaway from this presentation is the need for KDE officials to appear at a future committee meeting to explain why data are not being properly collected and statutes are not being properly enforced. Many good things are happening in early childhood education, which is the key to success.

Representative Rothenburger said the cost of public preschool seems high. In response to his question about the cost of private preschool, Ms. Olds said private facilities charge different amounts per child; she estimated the average cost as \$100 per child per week. Senator Carroll said infants are charged higher rates, but average rates are \$25 to \$30 per child per day. Ms. Olds said daycares are not required to have certified teachers. Senator Carroll said there is a push to get child development associates in private preschools and that there are ways to get quality results without having certified teachers.

Representative Bechler said recalibrating the Brigance Screen artificially raises Kentucky's results. If the screener is not correct, Kentucky should not be using it. He said that he is disappointed that KDE has not been following up regarding the statutory

reporting requirements that are not being met. Senator Carroll said that the new education commissioner is adamant about improving all levels of education in the state.

Presentation of staff report 2017 Update On The Child Fatality And Near Fatality External Review Panel

Ms. Kennedy said that statute requires that the committee annually report on the operations, procedures, and recommendations of the Child Fatality and Near Fatality External Review Panel. The panel conducts comprehensive reviews of child fatalities and near fatalities suspected to be a result of abuse or neglect. By statute, the panel is attached to the Justice and Public Safety Cabinet for staff and administrative purposes. A 2014 memorandum of understanding between the cabinet and the panel affirms the panel's independence.

In 2017, the panel reviewed 150 cases from FY 2016, nearly all referred to the panel by the Department for Community Based Services (DCBS).

For 2017, the panel was in compliance with all but two statutory requirements. First, the annual report was published on December 8 rather than December 1. Second, the term of the addiction specialist panel member ended June 2017. The statutory appointment procedure is that a practicing addiction counselor be selected by the attorney general from a list of three names provided by the Kentucky Association of Addiction Professionals. Attempts to contact the association for nominations were unsuccessful, so this panel position remains vacant. The Program Review report recommends that the General Assembly may wish to specify a procedure for filling the vacancy of a voting member when it cannot be filled in the same manner as the original appointment.

The panel met the other five statutory provisions. It met more frequently than required in statute. Panel members met attendance requirements. The panel posted updates after each meeting to the Justice and Public Safety Cabinet's website. The panel met its requirement to report a summary of its discussions to two interim joint committees. The panel met the requirement for destruction of records; its 5-year retention schedule mirrors the practice of other Kentucky agencies that track similar data.

In FY 2017, staff were one full-time staff attorney and one part-time executive advisor, both paid from the panel's budget, and an intern during the spring semester. Beginning FY 2018, staff were one full-time executive staff advisor, paid from the panel's budget. The responsibilities of a part-time assistant are being revised before the position is filled.

The panel also uses part-time case analysts who review all case records and prepare summaries. Three are forensic medical case analysts provided through a contract with the University of Louisville. Two are social work case analysts with whom the panel contracts

directly as personal service contractors. All contracts are paid through the cabinet's baseline funding.

The panel receives its funding through the Justice and Public Safety Cabinet's general fund baseline budget. The panel requested \$420,000 for FY 2017 and expended \$274,536. Of this, nearly 80 percent was for compensation for panel staff and the case analysts. The second largest expenditure, nearly \$41,000, was to the Commonwealth Office of Technology for the development of a data tool.

A web-based, confidential data tool on a SharePoint platform allows panel members to access case records and other information and facilitates data analysis over a period of years. In 2016, and 2017, the panel instituted an expedited case review process. This enabled them to enter complete data for FY 2016.

The panel's 2016 annual report contained nine recommendations, three of which were implemented, including one through action of the General Assembly. KRS 199.466 now allows a parent or legal guardian to obtain a background check of a potential caregiver using the child abuse and neglect registry maintained by the Cabinet for Health and Family Services.

Judge Crittenden said the panel was created by executive order in 2012 and mandated by statute in 2013. The annual report was 8 days late, but the panel wanted to get it done right. Since the panel does not have a member from the Kentucky Association of Addiction Counselors, Mr. Shannon will provide names of addiction counselors who, consistent with statute, can be designated as an expert to aid the panel.

The panel reviewed 150 cases. Of these, 59 resulted in fatalities, of which 53 percent were child victims under the age of 1. Sixty-five percent of head trauma cases had a caregiver with a prior criminal history. Forty-one percent of cases had a substitute caregiver at the time. The panel has seen an increase in neglect due to unsafe access to deadly means, primarily ingestion cases related to the opioid crises and unsafe weapons. Eighty-five percent of the cases reviewed had a prior history with DCBS. The panel contracts with universities and social workers to avoid creating a bureaucracy. Panel members are full-time experts in their fields.

In response to questions from Senator Carroll, Judge Crittenden said the General Assembly has started to address some of the pressing needs for addressing child fatalities and near fatalities. Increasing the number of social workers and their pay is always a need. A return to payments for Kinship Care is needed as a result of the opioid crisis and the number of children going into foster care. To aid in prevention, every death of a child should be treated by law enforcement as a death investigation.

Senator Carroll said early on in his career he had an infant death case and supports the recommendation regarding infant death cases. Judge Crittenden said the panel is involved with law enforcement training related to this at Eastern Kentucky University.

In response to a question from Representative Bechler, Judge Crittenden said there is no staff attorney for the panel for FY 2018. The panel has access to the attorneys in the Justice and Public Safety Cabinet to advise on open records and open meetings requirements.

Upon motion by Representative Simpson and second by Representative Rothenburger, the report was adopted by roll call vote.

Senator Carroll said the goal is to expand the role of this committee to bring transparency to whatever agency or part of government that is being reviewed. This committee has an investigative function and is important in the process of checks and balances within state government.

The meeting adjourned at 11:51 PM.