



**STATE BOARD OF EDUCATION  
TRUSTEES OF BOISE STATE UNIVERSITY  
TRUSTEES OF IDAHO STATE UNIVERSITY  
TRUSTEES OF LEWIS-CLARK STATE COLLEGE  
BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO  
STATE BOARD FOR PROFESSIONAL-TECHNICAL EDUCATION**

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**APPROVED MINUTES  
STATE BOARD OF EDUCATION  
February 3, 2012  
Special Teleconference Meeting  
Boise, ID**

A special teleconference meeting of the State Board of Education was held February 3, 2012. It originated from the Board office in Boise Idaho. Board President Richard Westerberg presided and called the meeting to order at 8:00 a.m. A roll call of members was taken.

**Present:**

Richard Westerberg, President  
Don Soltman, Secretary  
Ken Edmunds, Vice President

Emma Atchley  
Bill Goesling  
Milford Terrell

**Absent:**

Rod Lewis  
Tom Luna

Board President Westerberg requested unanimous consent to move item number three of the Policy Planning and Governmental Affairs agenda to number one on the Policy Planning and Governmental Affairs agenda. There were no objections to this move.

**PLANNING POLICY & GOVERNMENTAL AFFAIRS**

**1. Youth Athletes Concussion Guidelines Legislation**

**BOARD ACTION M/S (Westerberg/Terrell):**

**President Westerberg requested unanimous consent that this item be reviewed by the Athletic Committee in its full form after the bill is RS'd. Additionally, that once the Athletic Committee has reviewed the item, it shall be brought before the Board for consideration in a Friday teleconference meeting. There were no objections by other Board members.**

**Discussion:** Don Soltman introduced this item and deferred to staff and Matt Kaiserman to make their presentation to the Board.

Mr. Edmunds indicated the Legislature previously passed concussion legislation. The initial proposal had three components having to do with education, removal of players with signs of concussion and rules for readmitting players into an activity. The legislation did not pass in that form, but passed with the education component. Originally the law did not pass because of the liability for coaches possibly being too great. Mr. Edmunds mentioned this legislation has passed in Washington and 35 other states and Idaho is now considering legislation that would bring all three components into play. The most recent development regarding this legislation is the National Football League (NFL) has contacted the Boise based Gallatin Group to assist with getting this legislation passed in its full form. Currently, the proposed legislation contains all three components which include an education component, how participants are removed from activities and how participants can return to activities. Mr. Edmunds indicated the Board has been asked to support the proposed legislation and at this time the amendments are in draft form.

Mr. Edmunds summarized the way the language is currently drafted, the Board and the High School Activities Association, which is not under the Board or the Department's control, will gather guidelines and post them to a website which will be used for training of coaches, administrators, parents and players to describe how players are removed and how players are returned to activities.

Mr. Edmunds feels the draft is an improvement over what was done previously but still requires the Board to be involved with gathering guidelines. He commented the Legislature would like an entity in the state government to have responsibility for this. Mr. Edmunds expressed a great deal of concern about the Board gathering and preparing guidelines. Mr. Edmunds proposed those responsibilities be under the High School Activities Association, with the endorsement of the Board. Mr. Edmunds summarized the Board's involvement should be in the way of endorsement and providing an access point for the Board and any other affiliates for obtaining the concussion information for training purposes.

Mr. Terrell asked why this did not come through the Athletic Committee. He also expressed concern about the Board setting up guidelines as being outside the realm of the Board's responsibility, and felt the item needs to be reviewed by the Athletics Committee. Ms. Atchley indicated she thought the Board should assist with the program but not be directly involved with enforcement because that is outside the realm of the Board's responsibility.

Mr. Edmunds commented there is a problem with the existing legislation providing a perception requiring the Board to develop the guidelines. He felt the Board should not be the ones preparing those guidelines.

Mr. Kaiserman commented what is now in statute provides the State Board of Education would collaborate with the Idaho High School Activities Association (ISHAA) to create these guidelines, which is not happening. He stated the current draft is not requiring the state Board to do anything it is not already doing. He reminded members there is already a link on the Board's website to Dr. Faure's website which would suffice as access to the information. He declared they are asking for the state Board's website and the Idaho High School Activities Association to be a resource to schools and to youth sports organizations for educational material on concussions, to act as a conduit for this educational material. Mr. Kaiserman noted the current legislation had the language "you shall collaborate with the ISHAA" and reminded the Board the legislation still in draft format, but the current format would likely be the final version with the Board's approval.

Mr. Terrell asked for clarification on the involvement of the state Board. Mr. Kaiserman responded that the perspective is the state Board carries a certain level of significance and authority whose involvement would be seen as favorable. He commented changes to the language could be made so the Board would feel more comfortable with it.

Ms. Atchley commented on the ISHAA and expressed concern about the State Board of Education being asked to provide legitimacy to a program outside the jurisdiction of the Board. Mr. Edmunds also expressed concern about the Board and the Department having no control over the ISHAA. He said he felt the legislation was important, however, and would like to have the Board members come to some sort of agreement on it and provide a level of support for this legislation because of its importance for student athletes.

Mr. Goesling asked whether there is something in place that provides protection to students involved in activities during or after school where they are getting credit for that activity. Mr. Edmunds responded that to his knowledge the Board has no control over high school activities.

Mr. Kaiserman responded to the comments of Ms. Atchley stating he did not intend for the Board to perceive they would be giving legitimacy to the ISHAA. He commented further this is not an ISHAA program and not necessarily a State Board of Education program, but it is a state mandated program for schools and for youth sports organizations. He commented they are merely asking the state Board and the ISHAA to provide a conduit to educational material and seeking satisfactory means for the educational material to be disbursed. They are not asking the Board to provide this material, but to have a link on its website for people to access it. He responded to Mr. Goesling's question stating that this piece of legislation deals with sports at the school level and at the youth sports level, and it doesn't have any effect on PE programs. By supporting this legislation, the Board would be supporting the idea of this legislation and providing a link on its website.

Mr. Edmunds asked who would be responsible for the guidelines if the Board and the ISHAA are not. Mr. Kaiserman commented under the current draft, the Board would be in charge of gathering the information, but not creating the information. The Board would need to reference the CDC material which could be done through Dr. Faure's link on the website.

Ms. Bent stated that current law requires the Board develop this information. The change allows the Board to use what is already available. Mr. Westerberg asked where this legislation is in the process and its timeframe. Mr. Kaiserman commented it is a draft and has not been RS'd yet. They hope to have it RS'd and printed early next week, and then pushed through committee within a week.

Mr. Westerberg commented that members of the Board support the idea of doing something about the concussion issue related to sports. He felt it prudent for the Athletic Committee to work through the details of this item looking at the specifics of the language. He suggested the Board meeting again next Friday on a telephone conference to reconsider the legislation.

## 2. Charter School Funding Legislation

### **BOARD ACTION M/S (Soltman/Atchley):**

**I move to approve the request by the Idaho Public Charter School Commission to withdraw RS 20819, amending section 33-5208(1), Idaho Code. The motion carried unanimously.**

**Discussion:** None

### 3. Charter School Cap Legislation - Update

#### **BOARD ACTION M/S (Westerberg/Terrell):**

**I move that we authorize the President of the State Board of Education to appear in the legislative committees to support the lifting of the cap of the number-per-district of charter schools authorized in a given year. A roll call vote was taken and the motion passed four- to-two. Mr. Goesling and Ms. Atchley voted nay.**

**Discussion:** Mr. Soltman introduced the item and stated it was originally an item for information only. Ms. Bent reminded the Board members that this piece of legislation came forward from the Charter Commission requesting both the statewide cap and the one-school-per-district cap be removed. The Board amended the legislation in their approval process to remove the statewide cap but keep the one-school-district per year cap. Ms. Bent indicated staff has received questions and is seeking input from the Board on whether to remove the one-per-district cap or if it stands firm with the original approval.

Mr. Edmunds asked what would happen if two schools sought approval in the same year, which one would get priority. Ms. Baysinger responded the school that completed the application process and was approved first would get the priority. Ms. Baysinger indicated for Board members that such a situation has only occurred once since 1998, so its occurrence is rare.

Mr. Goesling questioned the fairness of the system for a school that was perhaps less qualified than another seeking approval first. Mr. Terrell responded that it is not a quality issue, but is based on how the law is set up, and that the Board must follow the law. Mr. Soltman added that there is a financial impact on a school district when a charter school opens and that should be considered in the one-per-district cap.

Mr. Westerberg asked if the financial impact was mitigated in the rule. Ms. Baysinger commented there is a 97% protection for districts this year. Additionally, the authorizer has a role in looking at comments from the district and if they are concerned about a second charter school opening in a year they would have the opportunity to deny that petition. If they chose not to deny that petition, the Commission would consider the district's point of view and could deny a charter if they felt it would be damaging to the district.

Mr. Edmunds repeated his concern about the fairness of when two requests are presented, and commented there may be additional work before the Board. Ms. Baysinger shared the commission's logic in removing the one-per-district cap. She summarized it is not about the number of schools that can open in a year, but more of an issue of availability of dollars that are inaccessible now because the cap is in place. She commented that there are charter ranking organizations that rank charter school laws and look at any type of cap as something that lowers a state's ranking. In this instance it makes Idaho's charter law look unfavorable; and currently Idaho is 32<sup>nd</sup> out of 41 states. She further commented the cap reduces Idaho's access to those grant dollars and that the Federal Charter Star grant is critical to the ability of new schools to open. She reported that Idaho did not receive the grant during the last application period but

could raise its chances of getting it by removing the cap. Ms. Baysinger clarified that this cap is not on the total number of schools that can exist in a district, but rather the number of schools that can open in any given year. It is a growth cap, not a total cap. The Charter Commission originally proposed removing both caps and feels it is the best route to take.

Mr. Goesling asked what the Idaho School Board Association's position is on this. Ms. Baysinger commented conversations with the Idaho School Boards Association and the Idaho School Administrators have indicated they would not object to the cap being removed.

Mr. Soltman asked if it would be appropriate to have the Charter Commission resubmit their proposed amendment. Ms. Bent stated that at this point in the legislative process the Board cannot submit any new legislation or change the piece of legislation that was put forward. The Board could let legislators know that the Board would be supportive of amending the legislation to remove both caps.

Mr. Westerberg asked for authorization from the Board to speak to the Legislature in support of removing both caps. Most of the other Board members were supportive of Mr. Westerberg's recommendation.

Ms. Atchley expressed concern about the governance of charter schools long-term as new schools are opened. She commented that generally speaking, the supporters of charter schools don't support local levies and therefore school districts that the Board oversees do not have enough support to pass levies. This means districts can suffer because of that defacto political aspect of charter schools. Ms. Atchley also remarked on her concern of the use of federal dollars instead of supporting the schools with state or private dollars. She was concerned about rushing to obtain federal dollars because we think we need the money right away, and not looking at means within our state.

#### 4. Community College Employee's Legislation

##### **BOARD ACTION M/S (Soltman/Atchley):**

**I move to support RS 21145, allowing community college employees to retain up to 90 days of sick leave when transferring from community college employment to state service and allowing for employees who transferred from Boise State University to the College of Western Idaho and then returned to state service on or before September 1, 2012 to be credited with the amount of sick leave transferred to the College of Western Idaho from Boise State University which remains unused. A roll call vote of members was taken and the motion passed five-to-one. Mr. Edmunds voted nay.**

**Discussion:** Mr. Edmunds asked about financial transfers with regard to this motion. Ms. Bent responded that currently all state employees, except community college employees, who leave state service and return within three years, have their sick leave credited back to them; the motion will allow community college employees to have the same benefit as other state agencies.

Mr. Edmunds express concerned on the financial impact of this motion. Ms. Bent clarified that there is some financial impact, but it would likely be very low given the number of employees affected by this motion.

#### 5. General Education Legislation/Rules Update

**Discussion:** Mr. Soltman introduced the item and stated it is an item for information only. He asked Ms. Bent to give a brief summary of where the Board approved legislation and rules are in the legislative process. Ms. Bent commented that all of the Board's rules have passed through the Senate and House Education committees. She said there were a number of people who testified against the online course requirement, specifically with regard to the asynchronous requirement. She commented Superintendent Luna made a commitment to bring back a temporary rule to remove the asynchronous requirement, and there will be a temporary rule in February to address that change. She further summarized the legislation that the Board approved, with the exception of the three charter school bills, has passed the House side and the change to the on-line course definition that was in code has passed the Senate side. Additionally, she said that Representative Nonini will be notified the Board has requested the RS for the charter school funding will be pulled.

6. Division of Vocational Rehabilitation – Temporary Rule – Technical Correction

**BOARD ACTION M/S (Soltman/Edmunds):**

**I move to approve the temporary rule changes to IDAPA 47.01.01 as submitted by the Idaho Division of Vocational Rehabilitation. A roll call vote was taken and the motion passed unanimously.**

**Discussion:** None

**BUSINESS AFFAIRS & HUMAN RESOURCES**

1. University of Idaho – Property Acquisition

**BOARD ACTION M/S (Terrell/Edmunds):**

**I move to approve the request by the University of Idaho to make expenditures not to exceed \$130,000 for due diligence and other initial pre-acquisition expenses in conjunction with acquisition of the McCall campus site as part of an exchange of property with the Land Board. The University will return to the Board to request approval of the final acquisition transaction upon identification of an exchange parcel or parcels and successful completion of the due diligence for the exchange. A roll call vote was taken and the motion passed unanimously.**

**Discussion:** None

**BOARD ACTION M/S (Terrell/Atchley):**

**I move to approve the request by the University of Idaho for authority to use future bond proceeds to reimburse itself for costs and expenses of the exchange including those incurred under the Term Sheet with the Idaho Department of Lands. A roll call vote was taken and the motion passed unanimously.**

**Discussion:** None

President Westerberg noted for the record the Board will be having Friday Board meetings as needed.

**M/S (Goesling/Terrell): To adjourn at 9:16 a.m. Motion carried unanimously.**