



**Minutes of the State Board of Health  
June 11, 2008**

Best Western Park Plaza, 629 South Hill Park Drive, Puyallup, WA

**SBOH members present:**

Treuman Katz, Chair  
The Honorable David Crump, PhD, Vice Chair  
The Honorable John Austin  
Keith Higman, MPH  
Frankie T. Manning, MN, RN

Patricia Ortiz, MD  
Mary Selecky, Secretary of Health  
Karen VanDusen  
Diana T. Yu, MD, MSPH  
Bill White

**SBOH members absent:**

Mel Tonasket

**State Board of Health Staff present:**

Craig McLaughlin, Executive Director  
Desiree Robinson, Executive Assistant  
Heather Boe, Communications Consultant

Ned Therien, Health Policy Analyst  
Tara Wolff, Health Policy Analyst  
Melissa Burke-Cain, Assistant Attorney General

**Guests and Other Participants:**

Tony Barrett, Lewis County Public Health  
Peter Beaton, Department of Health  
Nancy Bernard, Department of Health  
Vicki Bouvier, Department of Health  
Mark Cooper, Citizen  
Michelle Davis, Department of Health  
David DeLong, Tacoma-Pierce County Health  
Department  
Mitch Denning, Alliance of Education  
Association  
Maria Flores, Office of the Education  
Ombudsman  
Debra Fulton, Mukilteo School District  
Tim Hardin, Tacoma-Pierce County Health  
Department  
Christina Hulet, Governor's Office  
Suzanne Hidde, Department of Health  
Patricia Jatczak, Office of Superintendent of  
Public Instruction  
Mary Sue Linville, Washington State Risk  
Management Pool

Brown McDonald, Department of Health  
Nancy Napolilli, Department of Health  
Kathy O'Toole, Washington Education  
Association  
John Peppert, Department of Health  
Brian Peyton, Department of Health  
Kelly Scott, Citizen  
Sandi Swarouth, School Construction Funding  
Project  
Annette Shillinger, Citizen  
Michael Smith, Puget Sound School Coalition  
Nona Snell, House Capital Budget Committee  
Mark Soltman, Department of Health  
Art Starry, Thurston County Public Health &  
Social Services  
Richard Stewart, Seattle Public Schools  
Tami Thompson, Department of Health  
Jill VanGlubt, Washington Education  
Association  
Robert VanSlyke, Bethel Public Schools  
Grace Yuan, Puget Sound School Coalition

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Treuman Katz, WSBOH Chair, called the public meeting to order at 9:35 a.m. and read from a prepared statement (on file).

#### 1. APPROVAL OF AGENDA

*Motion: Approve June 11, 2008 agenda*

*Motion/Second: Crump/Higman. Approved unanimously*

#### 2. ADOPTION OF MAY 14, 2008 MEETING MINUTES

*Motion: Approve May 14, 2008 minutes*

*Motion/Second: Crump/Manning. Approved unanimously*

#### 3. ANNOUNCEMENTS AND OTHER BOARD BUSINESS

Treuman Katz, WSBOH Chair, said that he was working on the executive director's evaluation and thanked fellow members for their feedback. Craig McLaughlin, SBOH Executive Director, mentioned that staff member Jill Morgan was getting married in Hawaii and former staff member Hollie McGovern was doing well in California. He briefed the Board about the local boards of health meetings Board members and he have attended, then gave an update on the budget.

#### 4. DEPARTMENT OF HEALTH UPDATE

Mary Selecky, Secretary of Health and SBOH Member, thanked Bill White for sharing her seat at the Board because other meetings frequently make it difficult to attend the Board meetings. She then spoke about the cross-border conference she attended in May. She gave an update on the tomato recall caused by concerns about possible salmonella contamination and urged people to remember to wash their fruits, vegetables, and hands. She spoke briefly about West Nile virus and then moved on to the state budget. She finished by discussing the Department of Health (DOH) effort to define what constituted a 60-day supply of medical marijuana.

#### 5. BOARD MEMBER COMMENTS AND CONCERNS

Keith Higman, SBOH Member, spoke about efforts to provide more orientation to local board of health members and said the "FYI" publication produced by the Board would be used. The Honorable David Crump, Vice Chair, thanked Secretary Selecky and Deputy Secretary Bill White for their commitment to attending the Board meetings in spite of their very busy schedules. He discussed Mr. McLaughlin's attendance at a meeting in Washington D.C. on mental health policy. Board members discussed the financial difficulties facing local public health, including whether the Board might receive requests to suspend some of its rules and how it might respond. Mr. McLaughlin agreed to look into related legal issues and figure out how to report to the Board.

*The Board took a break at 10:50 a.m. and reconvened at 11:00 a.m.*

#### 6. PRELIMINARY 2009-2011 STRATEGIC PLAN FOR OFFICE OF FINANCIAL MANAGEMENT

Mr. McLaughlin explained the Office of Financial Management (OFM) requirement for all executive branch agencies to submit biennial strategic plans with a five-year outlook. OFM has requested that plans for the 2009-11 biennium be submitted by June 13. He pointed out proposed a preliminary strategic plan behind tab 6 of the Board's packet, which was an update of the 2007-09 plan. Member VanDusen suggested adding an objective under Goal 1 regarding reviewing rules for cost impacts. Chair Katz recommended not adding such wording today, but revisiting the issue for a possible amendment of the plan after staff has provided input to the Board on the issue. Vice Chair Crump said it is important to measure whether tasks are accomplished to show how successful the Board

has been. Mr. McLaughlin agreed to report on progress against the plan's performance measures at a future meeting. Deputy Secretary White said the proposed plan is consistent with the strategic plan of the Department and he recommended adopting it.

***Motion:** The Board approves the Preliminary 2009 Five-Year Strategic Plan submitted this day.*

***Motion/Second:** Crump/Manning. Approved unanimously*

## **7. BRIEFING ON HOW OTHER STATES PROVIDE FOR SCHOOL ENVIRONMENTAL HEALTH AND SAFETY**

John Austin, SBOH Member, introduced this agenda item. Craig McLaughlin gave a presentation on a school environmental health and safety programs in other states (see presentation behind tab 7). He also mentioned that a copy of Vermont school indoor air quality legislation was included in the packet. Member VanDusen asked whether other states have primarily addressed school environmental health through actions by their legislatures or by policy bodies similar to the Board. Mr. McLaughlin replied that the information scan primarily found legislative actions. He said the regulatory approach in Washington is unusual. Chair Katz noted that there appeared to be a broad array of approaches, and Mr. McLaughlin agreed. Member Higman commented that the Board's draft rule seems to be more inclusive than requirements of other states. Deputy Secretary White asked whether there is anything another state is requiring that is missing from the Board's draft rule. Mr. McLaughlin mentioned that New Jersey's indoor air quality monitoring requirements with standards, and some states addressed the use of building materials that do not off gas. Vice Chair Crump noted that only about ten other states seem to have environmental standards for schools. He commented that during normal building practices, construction materials stay out in the rain and get installed wet. He asked whether any other states had rules to prevent that. Mr. McLaughlin said that he did see that in a few other states' requirements.

## **8. OFFICE OF THE EDUCATION OMBUDSMAN—BRIEFING**

Member Higman introduced this agenda item. He explained that the Board received inquiries and suggestions on a process for handling school environmental health and safety complaints, so staff contacted the Office of Education Ombudsman (OEO) in the Governor's Office to learn more about their services. Ned Therien, SBOH Staff, introduced Maria Flores, an Educational Ombudsman, who gave a presentation that included background on the creation of the office, the office's mission, the process and role of OEO, complaint criteria, and data collection and reports. She described the role of OEO as striving to resolve conflict without regulatory power. This is the first public education ombudsman's office in the nation, she said. (See tab 8 for more details.)

In response to a question from Deputy Secretary White, Ms. Flores said that the office employs three ombudsmen, serves only public schools and tribal schools with some state funding, has experience with complex health complaints, and produces an annual report. Ms. Flores also indicated that OEO would produce special reports by request on issues such as health. Chair Katz asked for some clarification on OEO process. Ms. Flores provided more detail on protection of privacy rights, how OEO brings parties together, and how reports are produced and provided. Member Austin sought clarification on how OEO handles cases involving suspected child abuse or neglect. Ms. Flores explained that if violence or child abuse or neglect is suspected, it must be reported. Member Higman asked about resources provided in cases involving environmental health issues such as indoor air quality. Ms. Flores explained that local public health agencies were consulted. He asked a hypothetical question about a parent complaining about ceiling tile mold in a school. Ms. Flores explained that there would be an initial inquiry with contact by an ombudsman if

a formal complaint was lodged, then policy and authority issues would be explored if they existed, and finally OEO would contact the school as a neutral party if asked to do so by the parent.

Member VanDusen asked about the process leading to a consensus solution. Ms. Flores explained that the dispute resolution approach is used, but that “meetings” were generally not in person. Rather, mediation often takes place over the phone. She also indicated that OEO could contract for local mediation services. Patricia Ortiz, SBOH Member, asked about the volume of complaints and resolution interventions. Ms. Flores indicated that OEO had received 399 complaints in the past 21 months and that more than half have been resolved. Vice Chair Crump confirmed that students in K-12 public schools were the target population for OEO.

*The Board recessed for lunch at 12:10 p.m. and reconvened at 1:00 p.m.*

#### **9. SCHOOL RULE, CHAPTER 246-366 WAC—BRIEFING ON DRAFT RULE PROPOSED FOR PUBLICATION, POLICY ELEMENTS**

Member Higman introduced this item and said that at the end of the dialogue he hoped the Board would identify any elements causing concern and agree on next steps. Ned Therien introduced Mark Soltman, Department of Health. Mr. Therien’s presentation included a review of the goals and direction of the Board for the school rule revision; the recent revision team; the Board’s Environmental Health Committee recommendations about policy questions listed as outstanding issues; new provisions in the draft rule not addressed by existing rule; a comparison of recommendations from the School Rule Development Committee with the current draft; and next steps. (See materials under tab 9 for additional detail.) Deputy Secretary White commented that it would be helpful to capture complaints as part of the rule implementation report DOH will give back to the Board.

#### **10. SCHOOL RULE, CHAPTER 246-366 WAC—BRIEFING ON DRAFT RULE PROPOSED FOR PUBLICATION, ECONOMIC ANALYSES**

Mr. Soltman delivered a presentation about the estimated costs of implementing the rule. (For more detail see presentation under tab 10). He acknowledged the contributions of other DOH staff. Member VanDusen noted the complex nature of calculating real costs. Member Austin asked about schools deviating from the typical profile used in the analysis. Mr. Soltman explained that the cost estimates for school construction came from Eric Meng, who’s firm designs schools, and were also based on OSPI data. He noted that there was a big range in construction costs. Member VanDusen asked if there was a way to compute incremental costs to cover the changes in the rule. Mr. McLaughlin explained that state support is about \$168 per square foot and that some have said construction costs per square foot average about \$250 per square foot could be as much as \$350 or more. He estimated the rule added another \$3 to \$4 per square foot but that it would be dependent on a number of factors, including the size of the school and the type of school. Frankie Manning, SBOH Member, asked how costs of training staff and students to use eye wash, showers, etc. would be calculated. Mr. Soltman explained that the requirement to have emergency eye washes and showers is not new to schools so existing methods could be used to provide the training. Vice Chair Crump said that he had some specific questions concerning Mr. Therien’s presentation that he would discuss with him later. They’re related to what local health jurisdiction verification of playgrounds would entail; what the standard checklist that DOH is required to develop will include; what the process would be used to establish a technical advisory committee; clarifying a possible loophole regarding site approval within 60 day time limit for additions and remodels; clarifying

provisions of project review for additions and remodels limited to greater than 5,000 sq ft or 10% of replacement value by adding a time frame; and the duration of use of portables.

## 11. PUBLIC TESTIMONY ON SCHOOL ENVIRONMENTAL HEALTH AND SAFETY

Mark Cooper, Assoc. Professor at UW and parent representative on the SRDC, said he wished that parent and teacher viewpoints be respected. He demonstrated samples of discolored tap water and said that adding requirements for testing school drinking water for lead and copper are contentious. He expressed concern about implementation of the requirements. He also expressed concern about limitations in draft rule language regarding protections only for students, but not staff and visitors to schools. As another example of threats at schools, he showed a picture of a ceiling collapse he said was caused by a water leak and inadequate maintenance. He encouraged the Board to be proactive in protecting students. He said funding and implementation are tied together. He would like state-level oversight of the rules.

Annette Shillinger, resident of Renton, commented on her experience as a teacher and school librarian. She worked in schools for 35 years. Her last school had multiple roof leaks for many years and smelled musty. One storm caused a major roof leak into her library. Multiple strains of mold were identified. Contractors cleaned up the mold, but the school did not fix the roof. She became ill after continuing to work in the school. Other teachers quit working in the school before her because of illness. She became too ill to work in 2003. She was awarded disability by L&I but the school district appealed. Her L&I claim was upheld. Then she was sued by the school. Last year she won a jury trial. The school district is now appealing that decision. She said she believes school districts would rather hide problems and fight complaints than admit anything is wrong. She encouraged the Board to proceed with adoption. She showed some pictures of the school and her medical reactions.

Jill VanGlubt, teacher in Lake Washington School District and Chair of the Washington Education Association (WEA) Indoor Environmental Quality Work Team, said she has appreciated being able to participate in development of the rule draft. She expressed concern that the draft does not extend its protections to staff. She said that the revision could weaken the rule. She focused on language in the intent section of the rule of the wording that the provisions are for the protection of students. She particularly requested that the complaint section apply to staff. She expressed concern that L&I does not have rules requiring maintenance of ventilation systems or cleanup of mold in schools. She said that WEA requested the Board to extend protections in the draft rules for students also to staff.

David DeLong, Tacoma-Pierce County Health Department representing the Washington State Association of Local Public Health Officials (WSALPHO), stated that local health agencies want to emphasize the need for funding for them to implement school programs. WSALPHO also has a concern about consistent application of the rule statewide, which will require training. He observed, from his own experience carrying out a school program that the most important outcome from this school rule update would be if more local health jurisdictions implement such programs. He considers that more important than any new provision in the proposed rule revision.

Mary Sue Linville, Washington Schools Risk Management Pool, testified that she thinks the proposed rule draft meets the goals of this rule development. She said she believes most school districts want to implement these rules, but need funding. Many are already implementing the provisions voluntarily. She said having reasonable timelines for implementing the rules is an important consideration to allow successful implementation.

Grace Yuan, attorney for the Puget Sound School Coalition, testified that if the objective of the rules is that they are supposed to apply only to students, that should be made more clear. She expressed concern if the rules would apply to worker health and safety. She said that federal laws prohibit rules

on workplace safety that are more stringent than federal rules without federal approval. She expressed a need for more clarification. She said that if the rules were in effect for the 51 new schools built in this biennium with state match funds, it would have added \$17 million to costs. Increased maintenance and operating costs the first year of implementation would be about 34% higher than current expenses and 4% per year thereafter on an ongoing basis. She said the rule proposal differs from the approach of the Washington Sustainable Schools Protocol, which provides a menu of provisions to select from, rather than mandates.

Michael Smith, Puget Sound School Coalition and a Certified Industrial Hygienist with Amec Earth and Environmental, testified that he viewed the rule proposal favorably. However, he has concerns about the requirement for 100% testing of drinking water fixtures in elementary schools. He said representative sampling would be more appropriate. He gave some costing estimates from his company for collecting water samples in the Lake Washington School District. His estimate for consulting, collection, and laboratory analyses is \$3,762,620 for that school district, according to the requirements in the current draft. He said if the proposal were changed to allow representative sampling (25% instead of 100% of fixtures) for lead in elementary schools, the estimate would drop to \$2,047,830. He referenced EPA's 3-T's drinking water guide for lead in school drinking water, but noted that the guide does not say what percentage of fixtures would provide effective representative sampling. He suggested that sampling 25% of drinking water fixtures fit within EPA guidelines and recommended it for all schools.

Deborah Fulton, Mukilteo School District, said she agreed with Grace Yuan's testimony. She asked the Board to consider the difficulty school districts have passing bond measures. She said as much as 20% of operating funds require local voting. She said many provisions should be moved to guidance and asked that the rule not duplicate other rules, such as building codes or workplace regulations.

Robert VanSlyke, Bethel School District, thanked the Board for authorizing the formation of the revision team. He complimented Craig McLaughlin on his communication with all involved. He said student health and safety is a top priority for him. He described the Bethel School District and some of the ways the rule might affect it. He gave some operating cost estimates for the rule proposal of about \$65,000 the first year and \$7,000 ongoing annual cost increases per elementary school. His estimate is that the rule proposal would add about \$300,000 annual operating costs to the whole district. He said that his district is large enough to enjoy some economy of scale, which smaller districts might not. He said budget issues are real and encouraged the Board to take the lead in asking the Legislature to fully fund implementation of the rule.

*The Board took a break at 3:15 p.m. and reconvened at 3:30 p.m.*

## **12. SCHOOL RULE, CHAPTER 246-366 WAC—NEXT STEPS, BOARD DISCUSSION AND DIRECTION**

Craig McLaughlin asked the Board for guidance about next steps. The rule process was moving from a somewhat informal phase to the formal Administrative Procedures Act phase. Major issues are the effective date and phasing in some provisions. Another issue is whether the rule might apply to staff as well as students. Member Higman commented that the Environmental Health Committee has spent a lot of time considering the issues, including weighing potential significant costs. It recognizes that all of the rule might not be liked by everyone. However, he said the type of comments he is hearing are much more narrow in scope. There appears to be only a few issues that remain contentious. Member VanDusen commented that she considered the draft proposal to

reasonably fill gaps in the existing rules. Member Yu thanked the committee for its efforts. Deputy Secretary White said he agreed that there were only a few issues to be resolved, and the important thing is to get inspection programs established. Cost is an important issue and staff should find ways to explain costs simply. There is a need for infrastructure development. Vice Chair Crump commented that he thought it important for everyone to go together to request funding. He wanted clarification about the need for rules versus guidance and the rationale for requiring 100% testing of elementary drinking water fixtures for lead, rather than 25%. He said training must be paired with implementation and he had questions about grandfathering. He said he is sensitive about the cost concerns. An annual cost of \$75,000 to a school district equals a staff member. Member Austin commented that the issues with the school rule highlight a fundamental need to address how schools are funded.

Members VanDusen and Higman asked the Board if there was any direction to the Environmental Health Committee about next steps to finalize the rule. Member Manning said that the student/staff issue clearly needed to be resolved between agencies. She said that costs of training should be addressed. She said the rule decisions should be framed for the public by how important we think it is to protect our children. Member Yu commented that a healthy environment for students and staff is important. She said she supported the complaint section being restricted to student health issues. She commented that establishing a new program would be much harder for small local health agencies than large ones. Mr. McLaughlin commented that provisions in this draft rule that protect the environment for students would also protect staff. There are a few provisions in the rule that would give schools concern if they applied to staff, however, because they would give school staff protections not provided in other work settings. Adding general protections for staff, as well as students, could make major differences in the costs of the rule and complicate efforts to update the K-12 Health and Safety Guide.

Chair Katz asked if there were key decisions the Board needed to make today. Mr. McLaughlin said that he thought the committee could make the decisions needed for finalizing the draft based on any guidance from the Board. He asked if Board members wanted to provide comments about the effective date. Deputy Secretary White suggested that provisions should be prioritized based on health protections. He said that maybe the effective date could vary based on size of school district and local health agency. Member VanDusen commented that she would be concerned about making sure that all students had equal protection under the law. Melissa Burke-Cain, Legal Counsel to the Board, said that needed to be considered, but would not prohibit a phased in approach. Vice Chair Crump commented that when considering specific provisions, he would consider what is both good for the vulnerable population and what is fiscally doable. He said that July 1, 2010 is the earliest effective date he would recommend. Chair Katz asked staff to develop a work plan that covered from now until the effective date. Discussion amongst the Board expressed that the majority favored the rule focusing on students. Members Ortiz and Manning suggested an effective date of January 1, 2010. Member Manning said she favored a phase in approach based on health priorities rather than large versus small jurisdictions. Member Higman asked whether the committee should develop a phased in approach for elements of the rule draft based on risk. The Board directed the committee to undertake that task. Vice Chair Crump suggested calling school districts to ask them what effective date would be better for them.

### **13. HIV COUNSELING AND TESTING, CHAPTER 246-100 WAC—BRIEFING ON REQUEST FOR RULE REVISION AND NEXT STEPS**

Member Yu briefly introduced this item and John Peppert, Department of Health. Mr. Peppert gave a presentation that covered four areas: how HIV public health services are organized in Washington; why the federal Centers for Disease Control and Prevention (CDC) has revised recommendations regarding HIV testing; why the Washington State AIDS services networks and others are recommending changes in Board rules; and proposed next steps (see presentation behind tab 13.) Member Yu commented that not all doctors understand the changes from the 2005 rule revision yet, which eliminated some special counseling requirements for testing. She suggested that the process needs to be simplified and that HIV needs to be treated like any other STD. Mr. Peppert commented that medical practice does not change just because a rule changes. Education is needed. Member VanDusen called attention to the slide estimating that 75% of people who are aware of being infected cause 46% of new infections. Mr. Peppert acknowledged that this was a concern. He indicated that sexual behavior is hard to change and that there are those who do not disclose their status to their sexual partners. Member VanDusen asked about the level of stigma and discrimination associated with the disease. Mr. Peppert said some individuals are still very concerned about stigma, but AIDS support and gay rights organizations recognize that testing can lead to earlier treatment. Secretary Selecky commented on the importance of trust in facilitating good care and said it is very important to maintain that trust. Member Yu explained that some people believe that since HIV is treatable it is no longer a deadly disease. She also explained that rapidity of test results has had positive effects. Vice Chair Crump asked about the implications of the CDC recommendations in terms of state and federal law. Mr. Peppert explained that they were only recommendations, but people following those recommendations could be in violation of Board rules. Chair Katz asked about next steps. Mr. Peppert said that with Board approval he will develop a draft CR-101, conduct public workshops around the state, and come back to brief the Board in a few months. Member Ortiz volunteered to be the Board sponsor for this rule revision.

#### **14. PUBLIC TESTIMONY ON ISSUES OTHER THAN SCHOOL ENVIRONMENTAL HEALTH AND SAFETY**

Kelly Scott, former Vice Chair of Governor's Advisory Council on AIDS, provided some historical perspective on how HIV/AIDS has been handled in Washington State since 1988. He pointed out that the time had come to adjust policies that have treated HIV/AIDS as an exceptional disease. He said if the Board changes its rules, it would be important to look at whether the total system of laws and regulations created since 1988. He said HIV still needed to be considered an exceptional infection because of criminal justice measures and for other reasons. Mr. Scott explained that society still treats HIV infected individuals differently and that medical services can be hard to obtain (i.e. obstetric/gynecological, plastic surgery, skilled nursing home care, etc.). He also indicated that some ethnic and racial groups still view HIV/AIDS as an exceptional disease. Mr. Scott said he would submit documents to the Board with more background and recommendations. He said it should be simpler to get tested if we want to see numbers of those tested increase, but specific informed consent for testing, rather than generalized informed consent, should be retained. He asked that rule development look at what other states are doing regarding informed consent.

#### **ADJOURNMENT**

Chair Katz adjourned the meeting at 4:54 p.m.

**WASHINGTON STATE BOARD OF HEALTH**

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Treuman Katz, Chair