



**Minutes of the State Board of Health
September 10, 2008**

Red Lion Olympia Hotel, 2300 Evergreen Park Drive, Olympia, WA, 98502

SBOH members present:

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

Patricia Ortiz, MD
Mel Tonasket
Mary Selecky
Karen VanDusen
Diana T. Yu, MD, MSPH

State Board of Health Staff present:

Craig McLaughlin, Executive Director
Desiree Robinson, Executive Assistant
Heather Boe, Communications Consultant
Christy Curwick, Health Policy Analyst
Wendy Janis, Health Policy Analyst

Tamara Fulwyler, Outreach Coordinator
Ned Therien, Health Policy Analyst
Tara Wolff, Health Policy Analyst
Melissa Burke-Cain, Assistant Attorney General

Guests and Other Participants:

Jennifer Aspelund, Citizen
Nancy Bernard, Department of Health
Richard Best, Central Kitsap School District
Vickie Bouvier, Department of Health
Carlos Carreon, Cowlitz County Health Department
Jim Chenoweth, Three Rivers Christian School
Kelly Cooper, Department of Health
Mark Cooper, Citizen
Michelle Davis, Department of Health
Susan Davison, Teacher
David Delong, Tacoma-Pierce County Health Department
Mitch Denning, Alliance of Education Association
David Dumpert, North Kitsap School District
Ed Foster, Washington State Catholic Conference
Denise Frisino, Citizen
Debra Fulton, Mukilteo School District
James Green, Citizen
Loyal Hanrahan, Seattle Academy
Paul Harrison, Schools Insurance Association of Washington & United Schools Insurance Program
Sandy Hergert, Academy Schools
Kim Howard, Washington State Parent Teacher Association
Jonnie Hyde, Clark County Public Health
Lisa Iverson, Private Schools
Judy Jennings, WA Federation of Independent Schools

Kevin Kalal, Bellarmine Prep School
Tom Kuehn, Office of Superintendent of Public Instruction
Danielle Larway, The Evergreen School
Mary Sue Linville, Washington State Risk Management Pool and Washington Association of School Business Officials
Mariah Mason, Citizen
Melissa Maxfield, Citizen
Sally McLean, Federal Way School District
Nancy Napolilli, Department of Health
Janelle Neil, Academy Schools
Tim Nogler, State Building Code Council
Tom O'Brien, South Kitsap School District
Glenn M. Olson, Rainier Christian Schools
Kathy O'Toole, Washington Education Association
Lezlie Perrin, Labor & Industries
Brian Peyton, Department of Health
Keith Simon, Citizen
Thelma Simon, Citizen
Jodine Sorrell, Department of Health
Tracy Spencer, Labor & Industries
Art Starry, Washington State Association of Local Public Health Officials
Richard Staudt, Seattle Public Schools
Tami Thompson, Department of Health
Rob Van Slyke, Bethel School District
Jill VanGlubt, Washington Education Association

Denise White, Washington Conference of Seventh-day Adventists
Reva Wittenberg, Department of Health
Sandi Wollum, Seabury School

Charles Wu, Seattle-King County Public Health
Todd Yerkes, Seattle-King County Public Health
Lucinda Young, Washington Education Association
Grace Yuan, Puget Sound School Coalition

Treuman Katz, SBOH Chair, called the public meeting to order at 11:00 a.m. and read from a prepared statement (on file).

1. APPROVAL OF AGENDA

Motion: Approve September 10, 2008 agenda

Motion/Second: Crump/VanDusen. Approved unanimously

2. PUBLIC TESTIMONY ON ISSUES OTHER THAN SCHOOL ENVIRONMENTAL HEALTH AND SAFETY

No one asked to provide public testimony on other issues.

3. SCHOOL RULE, CHAPTER 246-366A WAC – SUMMARY OF ADDITIONAL WRITTEN COMMENTS RECEIVED SINCE AUGUST 27, 2008

Keith Higman, SBOH Member explained that today's meeting is a continuation of a public hearing for the school environmental health and safety rule from the meeting held in Spokane on August 27. He stressed that public comment is an important aspect of rule making. He indicated that Mr. Therien would summarize written comments received since August 27.

Ned Therien, SBOH Staff, called the Board's attention to the contents of Tabs 3-6. He took the Board through a summary of the comments received from August 27 until 8 a.m. today. (See Tab 3 for a copy of the presentation.) He also indicated that three comments had come in since his presentation was put together that are supportive of the proposal. Vice Chair Crump asked if the school groups expressing funding concerns had indicated which services would need to be abandoned to fund implementation of the rule. Mr. Therien said not in most cases; although, one comment expressed concerns with funding the nurse corps if this rule was implemented. Vice Chair Crump asked if the Board had been sent any detail from legislators following up on their initial request to delay adoption of the rule. Mr. Therien said no further detail had been received. Vice Chair Crump asked what was meant by the rule being specific to students. Mr. Therien said the Washington Education Association (WEA) wants teachers specifically mentioned in the rule and school groups do not. He explained this rule proposal contains some language recommended by the Department of Labor and Industries (L&I) regarding its authority. Mr. McLaughlin, SBOH Executive Director, called the Board's attention to the June 13 letter from L&I (under Tab 5). Mr. Therien mentioned the sheet in Tab 3 from the Department of Health (DOH) that describes current education and outreach; technical assistance and guidance; identified training needs; and future training activity anticipated.

4. SCHOOL RULE, CHAPTER 246-366A WAC – PUBLIC HEARING (CONTINUED); COMMENTS FROM OTHER STATE AGENCIES

Chair Katz briefly introduced the panelists for agenda item 4. Member Higman outlined the long history leading to the rule's development. He explained that it included discussion with other agencies designed to prevent duplication and said the rule focuses on gaps in addressing children's health and safety at school. Mr. Therien introduced Jennifer Priddy, Assistant Superintendent of K-12 Fiscal Services and Policy and Gordon Beck, Director of School Facilities and Organization from the Office of Superintendent of Public Instruction. Ms. Priddy said Mr. McLaughlin has been making admirable efforts to reach out to schools. She explained that despite his efforts, he has been meeting resistance due to financial issues affecting schools. Ms. Priddy said she would give some background on school financing. (For more information on the presentation, please refer to Tab 4). OSPI is requesting funding from the Legislature for implementation of the proposed rule in schools.

Member VanDusen asked Ms. Priddy a few questions concerning deferred maintenance. Ms. Priddy indicated that the state pays only 58% of districts' operation and maintenance costs. She explained that increased operating and maintenance funding might solve some of the deferred maintenance problems but small repair grants could also help address that problem. Member VanDusen commented that schools face challenges from L&I rules too. Ms. Priddy concurred and said that is why is it so important to have the Legislature's Basic Education Finance Task Force involved in considering the implications of this rule and associated issues. Member VanDusen asked if the task force was considering the Board rule as they factor in costs. Ms. Priddy explained that Mr. McLaughlin had briefed members of the task force and that she believed they are aware of the intertwined nature of the rule and facility maintenance issues.

Frankie Manning, SBOH Member, asked if there was shared funding across agencies for implementing such rules. Ms. Priddy said no. Member Manning asked if there are ways districts could get funding for emergency operation and maintenance needs. Mr. Beck said they can apply for funding for urgent repair needs. Chair Katz asked for more clarification on new school construction costs. Ms. Priddy said capital funding would come from bonds, special timber accounts, and special operating accounts. She explained that there are no big reserves and that the funds were not sufficient for all of schools' needs. She said hard choices are made during the budget process for competing interests and is not automatic that capital funding go to schools. Mr. Beck added that school districts obtain their primary source of funding for construction through the passage of local capital bonds. Deputy Secretary White commented that demand seemed to exceed resources and expressed interest in a comparison of cost demands for the current rule as opposed to the new rule. Ms. Priddy said that requirements in the current rule were not being met and associated costs were not being covered. Member Austin said he was sympathetic with OSPI's challenge of providing for basic education. He wondered how much total new school construction added to the budget. Mr. Beck explained that the total state share is about \$400 million a year. Member VanDusen commented about the new requirements posed by the sustainable schools protocol, low energy conservation, and environmental design requirements and its associated costs. Mr. Beck replied that those requirements do add about 5–8% to the construction costs.

Mel Tonasket, SBOH Member, asked what would happen without the Board's rule. Ms. Priddy answered that OSPI has identified a need for larger state allocations to address increased non-staff costs, facility maintenance staff, and research on what facility maintenance should be in the districts. Member Tonasket asked if the rule had helped OSPI understand these issues better. Ms. Priddy said absolutely, and that the rule revision process has put increased focus on facilities maintenance. Mr. Beck said that he wanted to complement the Board and Department on their efforts during a long process that has improved collaboration.

Member Crump commented that from testimony received by the Board in recent years, conditions appear bad in schools. He has not heard schools say that they do not want school safety, only that they do not have funding for it. He hopes that OSPI has seen the same pictures of school conditions that the Board has and will work on addressing funding issues. He asked if OSPI's request for funding was getting support from other entities. Ms. Priddy said funding OSPI's request was relatively new so other entities have had not much time to respond. She agreed that schools really care about students, staff, and protecting their investments. She said that school districts may be concerned that OSPI's budget request figures are too low and that not enough costs imposed by the proposed rule will not be covered by the state. School districts are concerned that these costs will impact their education programs.

Lesley Perrin and Tracy Spencer (both from Department of Labor and Industries) indicated that L&I had no concerns with the rule proposal and the addition of language to the rule regarding L&I authority. Member VanDusen asked a question to clarify enforcement jurisdiction. Ms. Perrin indicated that L&I could only enforce where they have jurisdiction and would not be able to enforce the Board rules. Deputy Secretary White opened discussion around the effects of sole jurisdiction versus over-lapping jurisdiction on enforcement. He said that if you protect one group (teachers or students) you protect the other. He wondered if enforcement for staff safety requirements would be more complicated if there was overlap from this proposed rule. Member Manning joined this discussion. Ms. Perrin explained that L&I was restricted to its areas of authority for employee health for enforcement but that it could make recommendations for other health and safety issues affecting staff. Diana Yu, SBOH Member, explored complaint issues with Ms. Perrin. Ms. Perrin explained that if there is a complaint of a serious nature, L&I usually sends in an enforcement compliance officer or an industrial hygienist to do an inspection. When L&I has clear regulatory authority and there is a health hazard, it can also issue a notice of violation requiring the employer to make changes to fix any problems. If an employer does not respond to the citation, L&I can take legal actions. There are several ways an inspection can be triggered; however, schools are not regularly inspected by L&I.

Tim Nogler, Director of the Building Code Council, handed out a letter to the Board describing the Council and providing comments about the rule. He said that these comments are from him and have not been reviewed by the Council. He commented that, although he has not done a fiscal analysis of the proposed rule, obsolete rules could have more costs than updated rules. (Please see Tab 4.) Deputy Secretary White asked about the role of the building code once the building is constructed. Mr. Nogler said there is essentially no activity by the building inspectors in the long-term operation of the building. He explained that the fire departments do some ongoing inspections (i.e., sprinkler system and alarm testing) and the building departments have authority to post *do not occupy* signs on buildings if necessary. Member VanDusen explored the need to commission HVAC systems. Mr. Nogler explained that all new buildings must have their HVAC systems commissioned and that this is in the energy code.

The Board took a break at 12:45 a.m. and reconvened at 1:22 p.m.

5. SCHOOL RULE, CHAPTER 246-366A WAC – PUBLIC HEARING (CONTINUED); PUBLIC TESTIMONY

The Honorable Ross Hunter, said he was here to speak about the budget process in the Legislature. He asked the Board to recognize the legislative budget process because this proposal would significantly affect school budgets. The Legislature must decide on trade-offs. He said it is appropriate for the Board's rules to address new construction, but fixing older schools should not be included if it would impact maintenance budgets heavily. The rules should avoid establishing a paperwork-heavy process that might better be done on the Web. He wants the rule to be evaluated by the legislative budget process. This means a bill about the issue should be run through the process. He said he would be willing to work with the Board on the issues.

Susan Davidson, Edmonds School District teacher representing the Washington Education Association (WEA), testified that she has been having health problems for eight years caused by her school environment. She said that she has asthma that is activated by the floor sealers used in the school. She also described health effects on students coming into the gymnasium where she teaches. She said the HVAC system was not working properly and the contractor followed up with improper repairs. An independent consultant, to whom she was referred by L&I, recommended other sealants without benzene used. She said that the HVAC system was not turned on in the school for employees in late summer before students started school. She said teachers are in schools longer than students and are more affected by such issues. She urged adoption of the rules without delay. She provided written testimony.

Ed Foster, Archdiocese of Seattle, said his comments today were in behalf of the Washington State Catholic Schools Conference. He said they are supportive of improvements in the rules, but urged further study of the disproportionate impact on private schools. He said they would ask the state to fund implementation of any new requirements in private schools as well as for public schools. He provided written testimony.

Keith Simon, parent, said that until these rules are adopted, the Board would continue hearing about the same types of problems it has heard about for the past ten years. He said that funding would be found if the rules are adopted. He said his son had illness symptoms in his school, so he was removed. He commented on the differences between symptomatic and asymptomatic individuals and that those who are asymptomatic might later develop long-term health problems. He said it is not just students who need protection. The rules, for example, should also protect the grandmother who comes to attend a school event. He urged adoption.

Jill VanGlubt, Chair, WEA Indoor Air Quality Work Team, commented that the rules are needed to protect students. She said additional things could be done, such as requiring health and safety training of school teachers. The two-year delay in the effective date is a reasonable compromise. WEA urges adoption immediately.

Glenn Olson, Rainier Christian School, commented that he is supportive of the health and safety of students. The Small Business Economic Impact Statement indicates that there would be a disproportionate cost to private schools. Increasing tuition to meet these costs may result in closure of some schools.

David Dumpert, North Kitsap School District, said they see some redundancy in these proposed rules. They see this as an unfunded mandate. They are seeing budget deficits and have had to discontinue some activities and programs; raise activity fees; as well as cut teachers. They are not against the rule, but ask it not be adopted until funding is provided.

Richard Staudt, Seattle Public Schools, said he supports the intent of the proposed rules. His district has trained and experienced staff. They have adopted a drinking water monitoring policy stricter than the rules. They recognize that they have had indoor air quality problems. They have corrected them. Their citizens have passed levies to support these initiatives. However, some parts of the rule will require new funding. He urged the Board not take final action until the Legislature has had a chance to consider funding.

Sally McLean, Federal Way School District and representing Puget Sound School Coalition, said the Puget Sound School Coalition participated in developing the proposed rules. The Coalition hired a cost estimator to evaluate the rules and has recently revised them. She said that the Preliminary Significant Analysis does not accurately reflect their estimates. She said that drinking water testing and providing ventilation for laminators will be expensive and require taking money from other school needs. Federal Way School District is one of the ten largest in the state. However, they are comparatively poor. She said that the rules would cost the school district about \$1.4 million, about the same as they pay for nursing services. The Legislature needs to provide funding. Funding will not necessarily come just from passing rules. The Coalition encourages the Board to delay consideration of adoption until the Legislature can review the issues.

Grace Yuan, Puget Sound School Coalition, urged that the rules be specific to students. Language changes since the June draft seem to extend the rule to employees, counter to federal OSHA regulations. The rules should only specify heating and ventilation system changes for new construction. Ventilation provisions in the proposal are not clear. She referred to written testimony submitted. She recommended the Board let the current CR-102 lapse.

Judy Jennings, Washington Federation of Independent Schools, expressed support of the goals of a health and safe school environment; however, she asked that the period before implementation be extended. The cost will burden private schools. Many church-based schools use buildings not primarily used as schools. She said private schools should be funded to meet these requirements along with public schools.

Jim Chenoweth, Three Rivers Christian School, expressed concerns about the cost of the rules. Raising tuition will cause the loss of students and possible closure of schools. He gave some examples of financial problems of families of students. He asked that any new requirements be funded by some other method than just going to the parents.

Richard Best, Central Kitsap School District, said his district employs trained and certified personnel to assure the safety of facilities and playgrounds. The local health inspector may not have similar certification, but would have authority to require costly facility changes. Last week a sanitary sewer backed up into a school. The maintenance staff solved the problem within hours. He questioned the provision in the rule that required the school to notify the local health agency in such a situation. He provided written testimony.

Maria Mason, parent, said she believed the Board needed to cite its statutory authority in the published rule. She asked that the complaint section include a provision for a person to testify to the State Board of Health. She recommended a need to define “shall.” She said that legislators and the Governor should hear about the need for these rules.

Mark Cooper, parent, handed out pictures of a ceiling collapse at his son’s school (Eckstein Middle School, Seattle). He pointed out apparent mold on the ceiling. He recommended that the ten square foot provision in the rule that triggers notification be reviewed. He said that he has talked to legislators that advised him to work to get the rule passed and they will find money for funding. He said he is concerned that without a rule, nothing will be added to the budget to solve these problems. He said that it is important to reference the Board’s statutory authority in the rule language to enhance enforcement. He also provided copy of RCW 43.20.050.

James Green, parent, commented that we are talking about minimum standards. Better enforcement is needed. The protection of children is what is important. He urged adoption. He provided written comments.

Mary Sue Linnville, Washington Schools Risk Management Pool (WSRMP), and Paul Harrison, Schools Insurance Association of Washington and United Schools Insurance Program of Washington, said that their organizations together insure all public schools in Washington. They testified that both of their organizations have personnel well versed in all areas of school safety. Last year, the WSRMP made 376 visits of schools and conducted 80 training sessions. Schools are rewarded with lower insurance payments for implementing best practices. Training of school staff is more important than conducting inspections. Their injury statistics show a major decrease since the K-12 Health and Safety Guide was adopted. Ms. Linnville asked the Board to switch gears: updating the K-12 Guide first. Mr. Harrison said that he works with more than 200 school districts in Washington and none has “turned a blind eye” to a safety concern for students. He also encouraged updating the K-12 Guide and improving training of local health staff. They volunteered to work on any committee to help update the K-12 Guide.

Art Starry, Thurston County Health Department Environmental Health Director representing the Washington State Association of Local Public Health Officials (WSALPHO), said training of local health staff is needed. He said WSALPHO generally likes the way the rule is written, especially the two years delay in effective date.

Debra Fulton, Mukilteo School District, commented that she used to manage the water quality laboratory for the State of Montana. She said that the Washington Association of School Administrators worked with legislators in the past not to impose testing of drinking water for lead. They now see a need for lead testing, but at a reduced level from the proposal. She said that construction issues should be addressed in building codes, not in this rule. She said that by including employees in the rule, it would set a different standard for employees who work in school facilities and those employees of school districts that do not. She said they worry about consistency in interpretation when local health staff might not be well trained. She had concerns about some parts of the Significant Analysis. She urged delay in adoption.

Lisa Iverson, Pacific Northwest Association of Private Schools, said they did not question the value of the rules for health and safety. However, private schools feel overwhelmed by the potential cost impact. They encouraged very gradual phase in, with construction requirements first. Parents of private school students would feel doubly hit by taxes for schools and increased tuition. The original mission of schools, teaching, seems to get lost. She urged delayed consideration for adoption.

Denise Frisino, former school teacher, said that she asks teachers that she runs into if they know about the rule revision proposal. Few say they do. She also has heard from teachers who have health problems that they link to their school environment are afraid to speak out for fear of retaliation. When she had health problems and wanted to challenge her employer, she said L&I was not supportive and told her to hire an attorney. She urged adoption.

Jennifer Aspelund, parent, asked all in room: “What price do you put on a life?” She described the difficulty she had when she asked for a school repair because of her child’s health problems. She urged adoption without delay. She said the delayed effective date gives adequate time for schools to seek funding.

Janelle Neil, Academy School in Kent, said her school has only 52 students in rented space. She said the rules would impact her school severely and disproportionately compared with large public schools. She asked the Board to further consider impact on private schools and poor public school districts. She encouraged the Board to avoid a “one solution fits all” approach.

The Board took a break at 3:37 p.m. and reconvened at 3:44 p.m.

6. SCHOOL RULE, CHAPTER 246-366A WAC – PUBLIC HEARING (CONTINUED); BOARD DISCUSSION

Craig McLaughlin, SBOH Executive Director, reviewed his memo and decision tree in the Board members’ packets under Tab 6. He said that the options for Board action seem to come down to how the Board wants to sequence next steps. He said that the Board could not vote at this meeting because the public comment period does not end until midnight this day. He said the next Board meeting is scheduled for October 8 in Yakima. Member VanDusen said that the first next step is to decide whether the Board wants changes to the rule proposal based on testimony received. Member Higman agreed that language in the draft should be reviewed based on testimony, such as heard from the Building Code Council. He said he also would like to re-examine the impact on private schools. Board members commented that they were reluctant to decide whether to postpone or not while the public comment period was still open.

Member Yu said some things seem to be missing from the rules. One is how to assure that implementation focuses on priority issues. She said there might be a need to require a prioritized inspection form. Member Manning commented that it seems peculiar that there is such a great disparity between the outlook of parents, schools, and the Legislature. Member Austin said he favors working with legislators before considering adoption. He also would like to see more flexibility in variances for small schools. Member Tonasket said he will be ready to vote at the Board’s next meeting and is not as concerned about the request from legislators. He said that when he asked the OSPI representative whether the rule proposal influenced their request to the Legislature for funding and she said “yes,” he was sure the rule is important. Member Yu said that she has concerns that not all local health officers enforce the rules. She asked whether there is an avenue for people to appeal beyond the local board of health to get enforcement. Melissa Burke-Cain, Assistant Attorney General, said that there are other avenues legally available, such as civil suits. Member Tonasket mentioned he was concerned about unmeasured health impacts from poor school environments, while the Board was only hearing rule implementation costs. Patricia Ortiz, SBOH Member, observed that she heard in all the testimony that everyone is concerned about the health of students.

Member Crump said he was leaning toward option three in Mr. McLaughlin’s proposal. He said there are a few areas of the rule he needed to think about, including rental spaces, the definition of school buildings, application of provisions to students versus all occupants of schools. He further commented that a culture is measured by its institutions and schools are a focal point for the community. He thinks a big consideration is whether passing a rule should happen before funding is determined. He recognizes the need to work with the Legislature, but the way some legislators have requested might not be the correct way. Deputy Secretary White said the testimony from small private schools was compelling because public funding of private schools is not going to happen.

Chair Katz said that he is sorry that the Board cannot vote and solve the problems today. He said that he is appalled by what he has heard about the condition of schools and thinks the priorities of

society are wrong. However, he sees a need for the Board to deliberate further. There was discussion about the procedure if the Board wants to make changes to the rule proposal. Mr. McLaughlin said that staff would need suggestions for changes from Board members within a week in order to put together a proposal for the Board's October 8 meeting. Member VanDusen commented that the Board should also develop recommendations to the Legislature, especially regarding the need to also fund local public health's implementation of the rules. Mr. McLaughlin recommended that taking a path requested by legislators would most likely achieve success in improving school health and safety. Member Tonasket spoke to the audience that they [the audience] would have more impact on the Legislature than the Board.

ADJOURNMENT

Treuman Katz, SBOH Chair, adjourned the meeting at 4:38 p.m.

WASHINGTON STATE BOARD OF HEALTH

Treuman Katz, Chair