



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH

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February 18, 2008

The Honorable Bill Fromhold, Chair
The Honorable Joyce McDonald, Ranking Minority Member
House Capital Budget Committee
Washington House of Representatives
Post Office Box 40600
Olympia, Washington 98504

Dear Representatives Fromhold and McDonald:

I am writing to thank you for your efforts—along with those of Representatives Schual-Berke, Priest, and Ormsby, as well as legislative staff—to improve communication about efforts to modernize the State Board of Health's 37-year-old school environmental health and safety rule. The discussions to date between the Department of Health, the State Board of Health, schools districts, the Puget Sound Schools Coalition, and the Washington Education Association have been helpful and productive.

I thought it might be useful to put into writing some of the understandings that I believe came out of that meeting. That way, you can respond if my impressions differ from yours. This is based on a meeting of the various parties facilitated by Representative Shay Schual-Berke on February 13 and the follow-up meeting you led on February 14.

One representative from a school district mentioned she had not heard of the rule update when she was with a smaller district. The Board and the Department have pledged to review our communications to date and to develop a more proactive communication plan that we will use going forward. I have agreed to deliver this communication plan to legislative staff by February 29.

In addition, I am available to meet personally with school district representatives over the remaining months of this project. We are currently setting up a meeting with three school districts in Representative Schual-Berke's 33rd Legislative District. I invite you to share this invitation with your members, and invite them to share it with their local school districts.

There is considerable concern about how the language in the second proposed draft is to be interpreted and what the intent is behind some of the proposed language. A third draft is now in the works that we hope will address many of those concerns, but it is essential the final language be clear and unambiguous. To this end, I have proposed convening a small group (about a dozen people) who would participate in workshops to edit the third

draft—hopefully next month. This group would refine the rule language before it is published in the Washington State Register for consideration by the Board.

The goal will be to eliminate confusion and disagreement that stems from unclear language and to clearly identify remaining areas of substantive disagreement.

The success of such an enterprise depends on good faith and trust—and that means that the membership of the group and the selection of a facilitator for the meeting are critical.

The Office of Superintendent of Public Instruction (OSPI) has agreed to pay for a neutral, professional facilitator. It is my intent to ask OSPI to handle the actual selection of the facilitator, as well. We will need to work out the exact process carefully to comply with state contracting rules, but it is my intent that organizations involved in the rule revision workshops will have a chance to suggest names and to comment on the top candidate before a contract is signed. Agreement on the person selected is essential. Objections by any participant to the facilitator would severely lessen the chance that this process would result in any sustainable agreements.

At the February 14 meeting, Representative Priest referenced a document that included a list of 12 organizations that might participate in the editing workshops. I will personally contact each of these organizations and work with them to identify representatives that will be able to contribute the most value to this process. OSPI has also agreed to identify and pay a school architect to participate. I will then propose a list of invitees that accommodates the preferences of participating organizations and provides a good mix of skills and backgrounds. I will send that proposed list out for review and comment before finalizing it. Again, I am extremely aware that failure to reach agreement from all parties on the guest list could doom the entire process.

There was concern expressed at the February 14 meeting that the public health justification for some rule elements is unclear. The Department of Health is currently working on the significant rule analysis required by the Administrative Procedures Act. This is essentially a cost-benefit analysis that must describe the justification and benefits of the rule, as well as the costs. As part of the rule revision workshops, we will take that work and present a briefing document explaining the public health rationale for and the intent of each rule element. There will be briefings documents, for example, on copper in drinking water, ozone from office machines, moisture, diseases carried by insects and rodents, etc. Time will be provided to discuss these briefing documents and identify points of disagreement, but the focus of the workshops will remain on clarifying the draft language.

I do not expect there will be many areas of disagreement about this list of public health concerns. The question in most cases is whether the potential problems (their incidence, prevalence, and severity) warrant the costs associated with the proposed solutions. In other words, many of the discussions may come down to debates over cost-effectiveness. Several participants have expressed concerns that the Board will not adequately consider

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the cost implications of the rules. Before the Board makes a final decision, it will have the significant rule analysis available to it, and it will consider the costs to schools of any requirements it places in rules. The significant rule analysis will be published with the proposed rule, and people will be able to submit comments on the analysis in writing or in testimony before the Board.

There continues to be concern that the rules conflict with the Washington Sustainable School Protocol (WSSP). It is our specific intent that they not conflict, we have stated that in writing, and we have been working with OSPI throughout this process to ensure that conflict does not happen. As OSPI mentioned February 14, if there is conflict, it may be because WSSP needs to be updated. All I can do at this point is iterate the Board's longstanding commitment not to create any conflicts and my personal commitment to clear up any confusion resulting from imprecise rule language.

Representative Priest has also raised a related concern that, if I understand it, has to do with competition for funds and opportunity costs. The Legislature authorized a 6 percent increase in capital construction costs for WSSP-compliant schools, and there is concern that increased costs resulting from the school health and safety rule may bleed away those funds and undercut the ability of schools to build to WSSP standards. I will make sure the Board considers these concerns as part of its deliberations. We will know more about new construction costs when the significant analysis is completed.

There seemed to be agreement in the meeting about trying to complete the rule in a timely manner. The original target for the Board was June, but it is probably not possible to adhere to that timeline and conduct the rule revision workshops. I agreed that I would be responsible for trying to get the rule approved to everyone's satisfaction by October. I also agreed to provide legislative staff with a more detailed timeline by the end of this week.

Finally, I have agreed to keep legislative staff informed of the progress of rule making.

I hope this captures the essence of our discussion. If I have missed something or you have anything to add, please let me know.

Sincerely,



Craig McLaughlin
Executive Director

cc: Representative Shay Schual-Berke
Representative Skip Priest
Representative Timm Ormsby
State Board of Health Members

Jack Archer, House Republican Caucus
Debra Gurtler, House Democratic Caucus
Susan Howson, House Office of Program Research
Steve Masse, House Office of Program Research
Sandi Triggs, Office of Financial Management
Gordon Beck, Office of Superintendent of Public Instruction
Michelle Davis, Department of Health
Beth Gilbertson, Kent School District
Gregg Grunenfelder, Department of Health
Judy Jennings, Washington Federation of Independent Schools
Gary Jefferis, Everett School District
Susan Smith Leland, Highline School District
Rod Leland, Federal Way Public Schools
Kathy O'Toole, Washington Education Association
Grace Yuan, Puget Sound Schools Coalition