

**MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND EDUCATION**

**Seventy-fifth Session
April 1, 2009**

The Senate Committee on Health and Education was called to order by Chair Valerie Wiener at 2:35 p.m. on Wednesday, April 1, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 5100, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Joyce Woodhouse, Vice Chair
Senator Steven A. Horsford
Senator Shirley A. Breeden
Senator Maurice E. Washington
Senator Barbara K. Cegavske
Senator Dennis Nolan

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Mindy Martini, Committee Policy Analyst
Sara Partida, Committee Counsel
Betty Ihfe, Committee Secretary

OTHERS PRESENT:

Ben Sayeski, Chief Education Officer, The Andre Agassi Charitable Foundation;
Chair, Andre Agassi Preparatory School
Catherine Levy, The Andre Agassi Charitable Foundation
Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department
of Education
Leigh Berdrow, Co-founder and Administrator, Academy for Career Education
Charter High School
Randy Robison, Nevada Association of School Superintendents

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Steve C. Knight, Executive Director and Principal, Silver State Charter High School

CHAIR WIENER:

We have two bills to hear today. Those bills are Senate Bill (S.B.) 379 and S.B. 391.

SENATE BILL 391: Revises provisions relating to charter schools. (BDR 34-1221)

BEN SAYESKI (Chief Education Officer, The Andre Agassi Charitable Foundation; Chair, Andre Agassi Preparatory School):

Eight years ago we started the Andre Agassi Preparatory School (Agassi) with a core mission to provide a high-quality education for at-risk kids who otherwise would not have the opportunity for the kind of education available at Agassi. We want to be accountable for providing that high-quality education. The difficulty over the past eight years has come from trying to ensure we are serving the population we are intended to serve.

The school was put in an economically depressed area of Las Vegas for a specific reason. Two Legislative Sessions ago, a two-mile radius was drawn so we could ensure we were drawing our targeted population. We made the commitment to you that we would serve at-risk, lower socioeconomic students. Eight years later, we can say we have made some improvements, but we have not achieved the results we promised.

Today, we are asking for further help from you so we can achieve our mission by having policies, procedures and protocols in place. Senate Bill 391 would go a long way to assist us in being able to tell you at the next Session that we have done exactly what we told you we would eight years ago.

SENATOR WASHINGTON:

When you came to us eight years ago, we had set parameters for you. This bill basically takes away those parameters and allows you to set up guidelines to determine who the at-risk students are. At the inception of the charter schools, one of the important aspects was the federal open enrollment guidelines. In setting up the guidelines you are asking for in this bill, how would you ensure that not only you, but also the State, would be in compliance with the federal open enrollment guidelines?

It is possible that the State could be sued if a preference or a selection process, not amenable to the federal guidelines or the *Nevada Revised Statutes* (NRS), were in place.

CATHERINE LEVY (The Andre Agassi Charitable Foundation):

Part of the issue has been that every time we try to fix meeting the needs of this certain population for which we were created, people find a way around it. They are resourceful in finding a way around it, for example, they use someone else's address. This bill is one attempt to try to solve this problem. If there is another way this can be done, we are absolutely open to it and to complying with federal standards. There would still be a lottery, and S.B. 391 would tighten that up.

MR. SAYESKI:

I see this as a tiered system. We would still do a lottery, and we would still have open enrollment.

SENATOR WASHINGTON:

Would you give preference to children based upon their eligibility for being classified as at-risk students?

MR. SAYESKI:

We use a standard form that is used in all schools which determines whether or not the child qualifies for free or reduced-price lunch. In the tiered system, we would have a combination of the two-mile radius, qualifying for the free or reduced-price lunch and the lottery system in place.

SENATOR WASHINGTON:

There are certain qualifiers. Do you already have those in place?

MR. SAYESKI:

To a certain degree we do. For example, it is a two-mile radius for students, and this year, it is a two-mile radius for siblings, then the rest of the tier system is in place.

SENATOR WASHINGTON:

I am not opposed to the idea in this bill. I want to make sure there are no repercussions or any unintended consequences that we have not

worked through. As we give you flexibility, if there is a problem, the federal authorities may come after you, but ultimately it reverts back to the State.

Has the Department of Education (NDE) taken a look at S.B. 391? Does it comply with NRS and federal regulations?

CHAIR WIENER:

Let the record show that the Superintendent of Public Instruction, Dr. Keith W. Rheault, nodded in affirmation.

SENATOR CEGAVSKE:

I have some questions, Mr. Sayeski. What is the population right around the school? Have you done the demographics for the area? What is the population of the school right now? How many students can you enroll and are you a kindergarten through 12th grade (K-12) school?

MR. SAYESKI:

Yes, we are a K-12 school. We have done the demographics; however, the breakdown is confusing in terms of the two-mile radius. It is difficult to get hard numbers because we have not yet gone through the thorough process of determining our levels of poverty. We thought by doing these other steps, we would get that information.

This past year for the first time, we offered all parents the opportunity to fill out the free or reduced-price lunch form. We did this for a couple of reasons. First, it helped benefit the school financially in food service, and second, it actually helps us in applying for grants. We have not seen a bump in our population as we have previously. That may have been influenced because we had not offered the form to everyone before, and because when people go to a school with the name Andre Agassi on the building, there may be some thinking that it all is "a free lunch." These things make it difficult to figure out the different levels of poverty.

SENATOR CEGAVSKE:

What is the population of your school now? How many kids do you have enrolled?

MR. SAYESKI:

We have 581 children enrolled.

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SENATOR CEGAVSKE:
And what is your capacity?

MR. SAYESKI:
Approximately 600 students.

SENATOR WASHINGTON:
Will you be discreet with determining the levels of poverty? I ask because I am sure there are people who are sensitive to their economic situation. Will you hold that information in strict confidence as you vet those students who meet the at-risk criteria?

MR. SAYESKI:
Yes, we will. We would treat that information in the same manner as we would when we receive any confidential information or forms.

CHAIR WIENER:
We have been revisiting the charter school mission. Senator Washington and I had the privilege of being among several of our colleagues who voluntarily got together the first day of my first Session to create a charter school bill. We had quite a journey, did we not, Senator?

SENATOR WASHINGTON:
You are absolutely right. If anyone ever wants to inquire how Andre Agassi really got his start, ask me. I can tell you the story behind the story.

CHAIR WIENER:
It was an exercise in collaboration. What a learning curve it provided for this little freshman who would simply say, "Okay."

SENATOR CEGAVSKE:
It was collaboration.

CHAIR WIENER:
In the original intent of the legislation, we were focused on the at-risk population. That is where it started. I am pleased the intent has continued as part of the mission of your school.

I close the hearing on S.B. 391 and open the hearing on S.B. 379.

SENATE BILL 379: Revises provisions governing certain educational programs.
(BDR 34-285)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):
Senate Bill 379 is the famous and infamous “bucket bill.” This measure was introduced last Session and was born out of an idea when we were working with the current majority leader in developing an opportunity to create flexibility and empowerment for local schools and school districts. The idea was to give them an opportunity to craft programs that would meet the needs of their students within their respective school districts.

In my prepared testimony, I will summarize the bill as quickly and expeditiously as possible ([Exhibit C](#)). This bill authorizes the Department of Education (NDE), within the limits of available money, to award grant money to school districts for certain programs and assistance. This is intended to empower the schools and school districts in Nevada to make decisions that will increase the academic achievement of our students. Flexibility is the foundation of this measure.

There are three words that should stand out in this bill. The first is empowerment. The second is achievement and the third is flexibility. Senate Bill 379 authorizes the board of trustees of a school district to submit an application to the NDE for a grant of money to implement certain educational programs. The list of authorized programs includes: full-day kindergarten, educational technology, peer mediation, Geographic Alliance in Nevada, certification for counselors, support teams for non-Title I schools demonstrating “Need for Improvement” for three or more consecutive years, career and technical education, empowerment schools with site-based decision making, and innovation and the prevention of remediation.

In order to receive a grant for funds, the school district’s board of trustees must submit an application designed as follows: to support the plan to improve the academic achievement of pupils in the school districts and individual schools, be based upon proven practices and strategies, include one or more of the specified programs, specify the amount of money that will be used for district-wide program implementation including a list of priorities of the programs, and specify the amount of money required to support programs at individual schools including a list of priorities of the schools.

SENATOR WASHINGTON:

This measure repeals the Commission on Educational Excellence and the funding Account for Programs for Innovation and the Prevention of Remediation. Although this measure maintains the Commission on Educational Technology (the Commission), it revises procedures for the allocation of funds for educational technology. Through this measure, the Commission will make recommendations to the NDE for the allocation of these funds.

For accountability purposes, the board of trustees of each school district that receives grant money must submit a report concerning the effectiveness of the program implemented with the funds. The report must be submitted to the NDE and the Legislature on or before February 1 of each odd-numbered year.

On page 2 of the bill, section 1 deals with the board of trustees of each school district and the grant application process. On pages 2 and 3, subsection 2 lists the programs that the grant monies can fund. On page 3, subsection 3, lines 17 through 24, spells out that if the money is not available to pay for the programs, there is a process where the Superintendent of Public Instruction will set up and prioritize those programs based on the needs of each school district. There is no fiscal note attached to this bill. This bill sets policy and procedures by which each school district can have some autonomy and some flexibility to develop programs that will ultimately meet those measured outputs for which we are striving.

I urge your support of S.B. 379 which empowers the school districts to have the flexibility to create programs that will not only implement or increase student achievement but will also meet the specific needs of their students.

CHAIR WIENER:

Dr. Rheault, on page 3, lines 17 through 21, could you explain the issue of insufficient funds? Do you have a sense of what a "fair and equitable manner among the school districts" might mean? From the school district's prioritized list, will they be awarded a certain percentage of every request based on the size of the school district?

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KEITH W. RHEAULT, PH.D. (Superintendent of Public Instruction, Department of Education):

Even though this would not be formula money going to each district, we need to keep that method in consideration, so that every district would have access based on their priorities.

CHAIR WIENER:

If there are limited resources, would each district be granted a percentage of whatever they are requesting?

DR. RHEAULT:

As part of S.B. 379, it says that when each school district submits its application, they will prioritize their request. We would use their priority list to fund their top priority and move on down the list until the money runs out.

CHAIR WIENER:

What if the school district said they submitted their request for a certain amount of money, but they could handle it with 85 percent of that amount. Could they then get money to fund more of their priorities that way?

DR. RHEAULT:

The problem we usually run into with that approach is one priority might be for \$100 million and the next one for \$200,000. The lesser amount is further down the list, so you could fund it, but it would not be their first priority.

CHAIR WIENER:

Is that something you would work out with each district?

DR. RHEAULT:

Yes. We would work that out with each district.

On the sign-in sheet, I did indicate I am neutral on S.B. 379. Senator Washington has spelled out the advantage of the bill which provides flexibility to the school districts in applying for money for projects they determine are priorities in their district. Certainly, the priorities vary from district to district.

I do have two concerns about some of the wording in the bill. I probably read more into it, but on page 2, lines 3 through 9, it looks like you were going to

eventually pool the money. Do all of those nine programs receive one shot or is there one specific State program funding it currently? I read into the bill that you might just pull all that money into the Trust Fund for Educational Technology (Trust Fund) and have that as a pool available for this purpose.

DR. RHEAULT:

My first concern is if you do have the money, it appears as though it will all dump into the Trust Fund. If I read it correctly, it gives the Commission the ability to distribute the funding. I do not see any other recommendations for the money. The career and educational technology (tech ed) area is only one of the nine categories, and I can tell you that tech ed is the only area of expertise the tech ed commissioners have. There could be a bias from them when it comes to prioritizing and approving applications for tech ed versus full-day kindergarten, empowerment schools or the other areas. I am concerned about having just the Commission as the only group providing recommendations for all the funding which is intended for the eight other areas as well.

My second concern is the timing proposed in S.B. 379. My impression is that the bill was going to transfer all the current one-shot program funding that might be in the Governor's *Executive Budget* and implement the program immediately. On page 8, lines 42 and 43, the effective date is July 1, 2009. An example of why that time would not be good is we have 464 full-day kindergarten teachers who are providing full-day kindergarten during this school year. If the bill were to pass and the full-day kindergarten funds were made available for any of the nine activities listed in the bill, it would put school districts in jeopardy of having to keep those 464 teachers pending until the applications were put out by the NDE and reviewed. By that time they may or may not be the highest priority to get funding. Late August would be the earliest we could get the applications approved, after which there is the notification process time. If we are not going to have full-day kindergarten, those kindergarten teachers would no longer have a job.

I recommend the start date be delayed until July 1, 2010. With that timeline, we could have the applications out in December 2009. The school districts could have their applications approved in early January or February 2010. That way the school districts could count on those teachers continuing or not continuing. This timeline would give everyone the proper notice for the start-ups of these programs.

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My last comment is that the State Board of Education and State Board for Career and Technical Education are on record for supporting the elimination of some councils and commissions in the State. They would whole-heartedly support the elimination of the Commission on Educational Excellence.

SENATOR CEGAVSKE:

Would that include the Commission on Professional Standards in Education?

DR. RHEAULT:

I did not go beyond that. That is not in the bill.

SENATOR WASHINGTON:

The July 1, 2010, date would be fine. We understand there are some provisions in the Governor's budget that eliminates certain programs such as the remediation program and a number of others. I understand the NDE has a list of priorities, so moving the start date to July 1, 2010, is a fair compromise. That date gives the State, the money committees and the NDE, an opportunity to work through the fiscal issues we are facing. Delaying the implementation of this policy would be prudent. Once it is implemented, it will give the school districts some flexibility.

Correct me if I am wrong, Ms. Partida, but the idea of placing the money in the Trust Fund was to make sure that tech ed was still being provided, and it was not part of the pool of nine. Those programs would be administered through the Trust Fund and lumped in to the entire "bucket."

MS. PARTIDA:

In regard to the Commission's Trust Fund and how that money is tied in with the rest of this, the only thing this bill does in regard to that Trust Fund account is say that the money would be used for any of these nine programs. The NDE would still be responsible. The Commission would still carry out other duties. Senate Bill 379 just eliminates their ability to actually fund the money.

CHAIR WIENER:

The location of the money would be in the Trust Fund. The Commission would not be making decisions or authorizing how those funds would be used in those other accounts, would they? What does the language say?

MS. PARTIDA:

As written, the Commission is the entity that would approve grants from that Trust Fund. That money is now available pursuant to section 1 of this bill and those applications would now be approved by the NDE in accordance with these new provisions being laid out in section 1.

CHAIR WIENER:

The Trust Fund is just where the money collects. All nine of those program areas have access to those dollars; it is not just tech ed programs. The NDE still has the decision-making authority as to how to disburse the dollars if this becomes new policy.

DR. RHEAULT:

I refer you to page 7, section 5, lines 13 through 21 in the bill. The reason I am not agreeing with the interpretation is because on line 19, it says "pursuant to section 1." To me that includes all the nine areas listed in section 1. It does not distinguish between tech ed and the other eight areas. On line 19, it continues by saying "... based upon the recommendation of the Commission to the Department." To me, all of section 1 applications apply and come under the recommendations of the Commission because it seems to be worded that way.

SENATOR WASHINGTON:

If the language is not clear, we need to make it clear.

CHAIR WIENER:

I suggest the two of you meet with Ms. Partida to agree on the clarifying language.

DR. RHEAULT:

I do not have a problem with the Commission making technology requests; however, they do not have enough expertise in the eight other areas to make those decisions.

CHAIR WIENER:

Let us make sure the intent is clear.

SENATOR WASHINGTON:

There are some provisions in S.B. 330 that would be applicable to this bill. When that bill comes before us, we can identify those sections.

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[SENATE BILL 330](#): Enacts the Initiative for a World-Class Education in Nevada.
(BDR 34-171)

CHAIR WIENER:

When you hear those sections in [S.B. 330](#), please bring them to our attention.

SENATOR WASHINGTON:

I will. We want to make sure that [S.B. 330](#) works.

SENATOR NOLAN:

On page 2, line 17 through 19, it says the grant money can be used for programs "... be based on practices and strategies that have been proven effective in improving the academic achievement and proficiency of pupils." Would all nine areas that are enumerated underneath that section be subject to that? Are all these program areas proven to improve academic achievement including those on page 2, line 40 which reads the "assistance for the support teams" What is the standard that would be used to demonstrate they are proven effective?

DR. RHEAULT:

That wording on page 2, line 17, is currently similar to the wording that is applied to the Remediation and Innovative Trust Fund that is administered through the Commission on Educational Excellence. As part of that application, we require the school district to submit some research base or do a needs assessment to provide some data indicating where the program has worked in other school districts, schools or from the vendor if it is a vendor product. If all of these criteria are applied, it may be difficult for some of these areas to show they are directly affecting student achievement. On page 2, line 38, for example, the programs for the certification of counselors for national certification may not apply. I know the counselors are effective in working with guidance and counseling of students to get into colleges and taking the right courses. They may be able to prove it, but it would be a difficult one to show that they have actually improved the academic achievement of students. Because of that they may end up being on a lower priority than some of the others that can better measure student academic achievement.

SENATOR NOLAN:

It appears there are no hard objective guidelines in regard to this. The school districts would submit whatever information they have prior to approval on the project as to its effectiveness, is that correct?

DR. RHEAULT:

The evidence may be out there, but I just do not know. Perhaps they can show that counselors who have this national certification do help students achieve better. The career and technical education programs, the empowerment schools and the full-day kindergarten have plenty of research to show academic achievement.

SENATOR NOLAN:

On page 3, lines 25 through 30, it establishes that written reports would come to the director of the Legislative Counsel Bureau for the purpose of submitting to the Commission during the interim. On page 3, lines 35 through 37, where it says, "An evaluation of the program or other assistance for which each school expended the money, including, without limitation, the effectiveness of the program" I question the word "or" in that subparagraph. Should that not be an "and" as we would want to see the effectiveness of the program "and" the assistance on the achievement of pupils enrolled in the school?"

DR. RHEAULT:

It was probably worded "or" for the one we cited about the certification of counselors on page 2, lines 38 and 39, if that is how the funding is used. Their evaluation would apply to the assistance to the student versus the effectiveness of the program where the others were programmatic.

CHAIR WIENER:

Each area may not have both components?

Dr. Rheault:

Perhaps they could report on the effectiveness only if it applies?

SENATOR NOLAN:

We would want to see the effectiveness language included in this section.

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CHAIR WIENER:

We have an amendment which has been proposed and will be presented by the Academy for Career Education.

SENATOR CEGAVSKE:

With future amendments, could we have the names of the person presenting the amendment along with his or her contact information? That would be extremely helpful.

LEIGH BERDROW (Co-founder and Administrator, Academy for Career Education Charter High School):

I represent the career and technical education high school in Reno, the Academy for Career Education, or ACE High School as we refer to ourselves. We are in support of S.B. 379 with the proposed amendment you have ([Exhibit D](#)).

The purpose of the amendment is to allow charter schools access to grant money specified in the bill. As the bill is written, we do not feel that charter schools have equal, if any, access to this funding if it becomes available. If the priorities of funding are established by the school district board of trustees, charter schools rarely, if ever, rise to the top of that priority list. That is understandable given the hierarchy of the relationship and responsibility they have in terms of where we fall in their priority scheme; therefore, we have suggested the changes in the proposed amendment.

CHAIR WIENER:

The amendment adds charter schools and their governing bodies, because in essence, they are their own school districts.

SENATOR WASHINGTON:

This is a good amendment, and I do not know why charter schools were not included in the original bill. With pending legislation, this may fall under the Nevada Charter School Institute, but we will wait until we get there to see.

RANDY ROBISON (Nevada Association of School Superintendents):

The Association of School Superintendents supports the concept of S.B. 379. It articulates also what "iNVEST 2009" supports in granting school districts the flexibility to meet the needs of their individual students both at the district level and the school level.

There is one key phrase in one of iNVEST 2009 statements. That statement is "Empower school leaders by providing funding for educational programs tailored to the specific needs of their students within their schools and then hold those schools accountable for results." The key phrase is about accountability. We have seen through programs such as S.B. No. 404 of the 74th Session, the ability to give the local school leaders the dollars and the discretion that they need to meet the needs of their individual students which vary from school to school and from district to district. The accountability mechanism is either you improve student achievement and maybe get to keep the money to continue, or if you do not get continued funding, the program is finished. Then you move on and try something different.

We had some of the same concerns that Dr. Rheault has articulated. If it can be worked out that it is not the Commission that is making those recommendations on everything except just on the tech ed application, that makes a lot of sense to us. We are in support of S.B. 379.

CHAIR WIENER:

The nature of the grant process is there are some exemplary programs and there are some that could be better. Dr. Rheault, if those programs have received money in the past, do they get a preferential treatment, or do you foresee that everybody has to prove themselves every year in order to be "fresh?"

DR. RHEAULT:

We do consider that. For example, in the Remediation Trust Fund money that we distribute, is it a successful ongoing program. We ask for that to be shown to us. If they need additional money to continue the program, we have used innovation as one of the criteria but not the only one. Just because they have received the money one year, does not mean they are going to get the money all the time.

CHAIR WIENER:

My hope would be that in addition to proven programs being continued, we would still be open to those innovative things that may not get awarded because another project that has been okay does get funded. I encourage the NDE to always be open to the innovators who might not get an opportunity to present in the first place.

DR. RHEAULT:

The way S.B. 379 is worded, it has this new concept for a pool of money, and the school districts give us their priorities. It is almost like starting from scratch, but we would also consider if a program were started last year and it needed some additional funds to enhance it, they could ask for that to be funded.

CHAIR WIENER:

They still have to be accountable, do they not?

DR. RHEAULT:

They still have to be accountable.

CHAIR WIENER:

They still have to have the outcomes, do they not? Programs that are in the pipeline need to prove themselves to be fresh, because it is easy to get complacent with good performance. My question is, if the program is good, why should it not become excellent or superior?

STEVE C. KNIGHT (Executive Director and Principal, Silver State Charter High School):

Silver State Charter High School is a statewide brick and mortar online high school located in Carson City. I am in support of S.B. 379 and echo what we heard previously about the importance of including charter schools. Charter schools do not have the funding; we do not have an equal playing field. We are serving wonderful kids who are doing wonderful things.

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CHAIR WIENER:

With no further business to come before the Senate Committee on Health and Education, the meeting is adjourned at 3:22 p.m.

RESPECTFULLY SUBMITTED:

Betty Ihfe,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____