

EORC Meeting Minutes July 10-11, 2017

The meeting was called to order by Chairman Campbell at 9:05 am.

Present: Chris Campbell, Chairman; Will Goodman, Vice Chairman; Ryan Zimmerle, Dale Layne, Ann Joslin, and Scott Woolstenhulme.

Absent: Jim Doramus, Andy Mehl.

Others Present: Michael Bartz, State Department of Education (SDE); Jo Ann Bujarski, SDE; John Foster, Kestrel West; Garry Lough, Education Networks of America (ENA); Mike Vance, ENA; Roger Sargent, SDE; Mike Costa, SDE. Jason Mau, Greener Burke Shoemaker Oberrecht; Gayle Nelson, ENA; Phil Oberrecht, Greener Burke Shoemaker Oberrecht; Mike McKerley, ENA; Dylan Baker, Idaho Commission for Libraries, Joyce Popp, Department of Health and Welfare, Kay Christensen, Office of the Attorney General.

The agenda was approved as amended to include an update by the Idaho Commission for Libraries, by unanimous consent.

Ms. Joslin gave an update on the library reimbursement distributions and projections for the next fiscal year.

Mr. Zimmerle made a motion to approve the minutes as amended by the committee. Mr. Layne seconded, motion carried.

Mr. Woolstenhulme made a motion to approve the EORC Procedures Manual. Mr. Zimmerle seconded, motion carried.

Mr. McKerley, ENA's Chief Technology Officer, updated the committee members on the current Idaho contract and projects with other states. There are about 6,000 sites being served by ENA across the country.

Meridian High School is currently remodeling their building and it will take five years to complete. Each year the Wi-Fi infrastructure needs to be modified, but the student count hasn't changed so there is no change in cost to the state. While the contract specifies a 2.4 GHz design, ENA has created a 5 GHz design for schools where higher capacity is required. Mr. McKerley indicated there are no other states paying for statewide wireless in the manner that Idaho is.

Vice Chairman Goodman asked if there were a refresh of the wireless under the current contract, would there need to be a replacement of all current hardware. Mr. McKerley said yes.

The Committee noted there are staggered service end dates for buildings under the existing contract. Vice Chairman Goodman asked how many buildings' contracts extend beyond fiscal 2019. Mr. Sargent said there are 18 buildings.

After the ENA presentation, the Committee began to review Idaho legislation that affects the wireless contract, requirements and technical documentation.

The discussion turned to the logistics of expanding the wireless service to all school buildings. Approximately 760 buildings would be involved in a complete K-12 implementation. It was noted that elementary schools seem to have more square footage per student than high schools.

There were five potential models discussed for the future wireless program:

1. Statewide contract – Everyone would be included, no opportunity to opt-out
2. Similar to current system – Schools could opt into a statewide contract or receive distribution of funds instead
3. Multiple contracts – Schools can choose which state-managed contract to participate in
4. Distribution of funds with statewide contract vehicle(s) available
5. Distribution of funds only

The survey sent out to school districts found three common themes among those who responded:

1. They would like more control over aspects of their wireless network,
2. They want homogenous wireless across the school district, and,
3. A majority of schools said they would prefer money as opposed to services.

Vice Chairman Goodman made a motion to adjourn for the day; Mr. Zimmerle seconded, motion carried. The meeting was adjourned for the day at 2:45 pm.

The meeting reconvened Tuesday, July 11 at 9 am.

Chairman Campbell introduced Kay Christensen, Chief of Contracts and Administration Law, Office of the Attorney General.

Ms. Christensen described how contract law has been affected in recent years by other Idaho contracts that have been involved in lawsuits.

In January of 2009, a contract was awarded and then amended the following month. This resulted in a lawsuit and the eventual voiding of the contract by the district court.

Because of the prior contract issues, Section 67-5718A, Idaho Code, was repealed and replaced with Sections 67-9210 and 67-9211, Idaho Code.

Ms. Christensen spoke about the current wireless contract with ENA. She said there is nothing in the body of the contract that talks about extending the contract. The contract can be renewed, but a renewal is not the same as an extension. The cost schedule included in the contract pertains to grades 9-12, with a maximum 5% adjustment over time.

Ms. Christensen said amending contracts is very risky. When items such as the scope of work are different from what was originally advertised, then that is an amendment. If it is done incorrectly, not only will the new contract be invalid, but the original may be as well.

Mr. Goodman asked about the schools whose sixty-month service end dates exceed the contract end date and how the Committee should approach what to do about staggered end dates. Ms. Christensen said she cannot provide the committee legal advice, and the committee is not statutorily entitled to give legal advice to the Superintendent. There are substantive legal issues in determining an end date of a contract. A one-year extension contract is really a new contract.

Ms. Joslin asked for the difference between an extension and renewal. Ms. Christensen said extension is not a term mentioned in the contract, so there is no reason to discuss it. We can talk about renewals; the contract contemplates renewals in five-year chunks. It is less clear if it can be renewed for one year.

Mr. Zimmerle asked if Sections 67-2801 through 67-2809, Idaho Code, would still apply to the SDE as a political subdivision. Ms. Christensen said there is always a question about the roles of responsibility between the SDE and the Superintendent and she cannot say where those lines are drawn.

Mr. Goodman said there is existing hardware at the schools and questioned how procurement options like sole sourcing could affect the hardware that is currently there. To go for bid again, the current vendor has a significant advantage because they already have the hardware in place. Ms. Christensen said that is really a discretionary decision. Ms. Christensen said the opinions of the vendor have to be taken into consideration; are they willing to have a one-year contract?

Chairman Campbell said the complete contract is posted on the SDE website at <http://www.sde.idaho.gov/tech-services/hswp/>.

Vice Chairman Goodman shared his view that there are two options going forward:

1. A state contract with an opt-in option, and,
2. A distribution with optional contracts for managed services.

Vice Chairman Goodman said it would be difficult to impossible for one employee from the SDE to go to all the K-12 schools (760 schools) to certify they meet all requirements for reimbursements. Perhaps there could be a contract with an outside entity to work on certification.

There was discussion on the requirements in the current contract. Schools submitted an opt-in form simply to request service but were never obligated to continue service.

Mr. Zimmerle made a motion for the Committee to recommend to the State Department of Education a wireless budget of \$8.5 million. Ms. Joslin seconded, motion carried.

The Committee requested the SDE get a legal answer regarding the implications of amending the contract in the following ways:

Can the contract be amended to:

1. Expand from only grades 9-12 to include all grades K-12,
2. Change metrics,
3. Change the price of the service, or,
4. Change the end dates of the current contract.

In order for the committee to move forward with a recommendation extending the current contract, the answers to the questions above would have to be:

1. Yes
2. Yes
3. Yes or No
4. Yes

The vendor would also have to agree to the new terms before proceeding any further.

Mr. Woolstenhulme made a motion to recommend option #2 (school districts could opt into a statewide contract or receive distribution of funds instead) if the answers to the previous questions are yes. Ms. Joslin seconded, motion carried.

The next meeting was scheduled for August 28, 2017 at 9 am.

The meeting was adjourned at 3:15 pm.