

**Kentucky Board of Education - Special Meeting
December 5, 2017**

**300 Sower Boulevard, 5th Floor
State Board Room (514)
Frankfort, KY 40601**

SUMMARY MINUTES

The Kentucky Board of Education (KBE) held a special meeting on December 5, 2017, in the State Board Room (514) on the Fifth Floor of the 300 Building located at 300 Sower Blvd., Frankfort, Kentucky. The board conducted the following business:

I. State Evaluation Appeals Panel (SEAP) - Convened 1:00 p.m. ET

II. Call to Order

Chair Mary Gwen Wheeler called the meeting to order at 2:32 p.m. ET.

III. Roll Call

Chair Wheeler asked Leslie Slaughter to call the roll of members and advisors. All 11 voting members were present; however, ex-officio member President King was absent. Board advisors Tracy Cusick and Wayne Lewis were absent; however Lewis joined the meeting shortly after roll call.

Present Board Members:

Mr. Grayson Boyd
Mr. Ben Cundiff
Mr. Richard Gimmel
Mr. Samuel Hinkle
Mr. Gary Houchens
Ms. Alesa Johnson
Mr. Roger Marcum
Ms. Nawanna Privett
Mr. Milton Seymore
Mr. William Twyman
Ms. Mary Gwen Wheeler

Present Advisors:

Kathy Gornik
Wayne Lewis
Joe Papalia

Absent Board Members:

CPE President Bob King, ex-officio

Absent Advisors:

Tracy Cusick

IV. Hearing Officer's Report: Status of KBE Administrative Regulations (Action/Discussion Item: 2 hours) - Kevin Brown, KDE General Counsel and Associate Commissioner

Kevin Brown, KDE Associate Commissioner and General Counsel, presented the Hearing Officer's Report. Brown began by explaining the "Statement of Consideration" (SOC) process associated with administrative regulations and noted that there were six (6) SOC's to be presented to the board during the meeting, including:

- *703 KAR 5:270, Kentucky's accountability system;*
- *701 KAR 8:010, Charter school student application, lottery, and enrollment;*
- *701 KAR 8:020, Evaluation of charter school authorizers;*
- *701 KAR 8:030, Charter school appeal process;*
- *701 KAR 8:040, Conversion charter school petition, conversion, and operation; and*
- *704 KAR 3:370, Kentucky framework for personnel evaluation.*

IV.A. Statement of Consideration for 703 KAR 5:270, Kentucky's accountability system

Rhonda Sims, KDE Associate Commissioner for the Office of Assessment and Accountability; and Todd Allen, KDE Deputy General Counsel, presented the SOC for this administrative regulation. Using the SOC document posted to the board's online materials site, Sims began by giving an overview of the public comments received on the regulation. Sims shared that the most substantial number of comments dealt with the system's "Opportunity and Access" indicator, specifically surrounding the measures associated with the areas of "whole child supports" and "rich curriculum." One specific question posed by board member Gary Houchens related to the inclusion of the work ethic certification process. Houchens referenced language from SB1 (2017) that may prevent the assessment of essential skills. Sims clarified that Kentucky is not planning a formal standardized assessment for essential skills, but rather a recognition for students who successfully demonstrate that they possess such skills. She also clarified the work ethic certification was not required for every student, but rather an indicator of "rich curriculum" that measures the percentage of students at the school level who are earning the recognition.

Sims explained that, based upon the comments received regarding the "Opportunity and Access" indicator, the following amendments were being proposed to the regulation:

- *clarification regarding the exclusion of the primary talent pool in regard to equitable access to gifted/talented services;*
- *the removal of school librarians/library media specialists and Family Resource and Youth Service Centers (FRYSCs) from the "whole child supports" category (citing their current requirement by state law); and*
- *the addition of the term "specialist" to the area related to teacher certification within the "rich curriculum" measures.*

Board advisor Joe Papalia asked how many schools currently have "specialty teachers" versus librarians and library media specialists. Sims explained that the specialty certifications fall under several academic disciplines, so the data could be collected, but was not available at this time. Commissioner Stephen Pruitt explained that data indicates a large percentage of schools and

districts already have access to library media specialists and FRYSCs; however, far fewer have teachers with the specialist certifications. Board member Rich Gimmel noted that, by removing the library media specialists and FRYSCs, the system would be adding stronger weight to the Visual and Performing Arts and other specialty areas.

Papalia expressed concern that this change may be viewed as unfair to those districts who are already experiencing financial distress. Board member Ben Cundiff inquired whether this change would be viewed as an unfunded mandate. Gimmel expressed belief that measuring schools on such indicators was important, citing his belief that the arts and other areas are oftentimes the only reason that students desire to attend school. Board member Roger Marcum stated that this conversation gets at the heart of the role of the state board of education. Marcum stated that he believes the role of the Kentucky Board of Education (KBE) is to set high expectations for districts, schools and students, while the role of the legislature is to prioritize the resources and funding to achieve such expectations. Board member Sam Hinkle agreed, saying that setting high expectations is one way that the KBE can show leadership as a board. Hinkle went on later in the discussion to say that he believed that the regulation had received such a substantial number of comments on this indicator because it is likely an area where the system isn't living up to the expectations. Hinkle stated concern that these areas aren't being given the attention they deserve. Commissioner Pruitt agreed, stating that many educators still operate with the No Child Left Behind (NCLB) mentality, meaning that the only two academic areas that matter are reading and math. Marcum agreed and ended the discussion by stating that this is the first time that the accountability system points out true inequities across schools and districts.

Sims then moved on to the "Transition Readiness" indicator of the system, which received the second largest number of public comments. Sims gave an overview of the public comments received and then began to highlight the proposed changes to the board that came as a result of those comments. The proposed changes (beginning on page 10 of the regulation) included:

Academic Readiness:

- *The recommendation for an allowance of a combination of indicators for academic readiness;*
- *alignment to the Council on Postsecondary Education's requirements surrounding specific academic benchmarks for one (1) quantitative reasoning or natural sciences and one (1) written or oral communication, or arts and humanities, or social and behavioral sciences learning outcomes; and*
- *inserting the term "each" for clarification regarding the various measures.*

Career Readiness:

- *Replacement of the term "and" with the term "or" (page 10, line 10) in the options of measures (due to alignment to SBI (2017) and*
- *removal of the option that measures a minimum course sequence (page 10, lines 13-14).*

Military Readiness:

- *Striking this option completely from the optional paths for students to demonstrate transition readiness.*

The board had extensive discussion surrounding these proposed changes. Board advisor Kathy Gornik inquired about the changes and what evidence suggested that the changes were the appropriate path forward. Sims stated that historically, the former system reflected a strong alignment from the K-12 system to both college and careers. Sims stated that the changes surrounding academic readiness promote such alignment in the new system.

Gimmel inquired about the removal of the term "and" in the career readiness category. Gimmel asked General Counsel Kevin Brown his opinion about the language being out of compliance with SB1. Brown explained that, based upon the feedback received, he did believe that allowing the term "and" to remain would put the regulation out of compliance. Commissioner Pruitt explained that he had been in conversation with the legislative bill sponsor, who confirmed that the language was out of compliance. Pruitt stated that choosing to leave the regulation as is could give reason for the legislature to find the regulation deficient. Papalia expressed concern that the proposed amendments to the career readiness measures made the path less rigorous. Wayne Lewis reminded the board that SB1 (2017) has a requirement for students to be preparatory (or a "concentrator") in a career pathway in order for industry certifications to be reimbursed by KDE. Lewis indicated that this would still be a strong incentive for schools and districts to ensure that students were taking the correct course sequences.

Gimmel inquired whether a bonus would be possible if a student demonstrated two measures, rather than just one. He stated his concern that the changes were lowering the bar for students. Commissioner Pruitt stated that a bonus did exist for the high-demand industry certifications. Gimmel again asked if the requirement for more than one measure was illegal. General Counsel Brown stated that it was clear that the General Assembly believed the requirement to be out of compliance with current legislation and that the regulation could be found deficient if approved without changes. Brown said that, given this information, approving the amendments to this area of the regulation is likely the most prudent path forward, given the outside factors and the opinion of the bill's sponsor.

Board member Alesa Johnson expressed concern over the term "career ready," citing that it could imply that students who are deemed career ready are ready to enter directly into the workforce after high school. Johnson noted the importance communicating the need for continued education and training beyond high school. Gimmel stated his concern that the proposed changes reduce the K-12 system's credibility with business and industry when the standards are lowered.

Laura Arnold, KDE Associate Commissioner for the Office of Career and Technical Education, was asked to come to the table to provide comments on the issue at hand. Arnold began her remarks by saying that the board's discussion on what the definition of "transition readiness" means is the question that needs to truly be answered. As an example, Arnold noted the measure of dual credit, citing that seamless programs of study from secondary to postsecondary education, are a strong example of a student's readiness; however, she did agree that the removal of the term "and" does appear to lessen the rigor of the experiences for the student. Despite this, Arnold reiterated her contentment with the continued inclusion of career readiness as a part of the accountability system, citing that Kentucky has been a national leader in this effort for the last several years. Arnold stated her understanding of the issues at hand and that she would support the direction that the board wished to pursue. Gimmel followed up by providing the recommendation that the board continue

the inclusion of the term "and" following dual credit only. Commissioner Pruitt asked that, if the board chose to approve such, that members advocate their rationale to members of the General Assembly.

General Counsel Brown went on to explain what occurs when an administrative regulation is found deficient. Marcum recommended that Gornik, Papalia and Gimmel (as members of the business community) possibly meet with members of the General Assembly on this issue. Commissioner Pruitt agreed with Marcum's recommendation and also noted that the board would be engaging in a much deeper policy discussion on high school graduation requirements, which will provide a second opportunity to address these concerns. Associate Commissioner Arnold reiterated that the dual credit requirement could be made very rigorous, should the state's postsecondary institutions allow for collaboration to create and ensure seamless pathways and programs of study. Arnold noted that current barriers in many regions of the state prevent this from occurring in many career pathways.

Board member Milton Seymore expressed his belief that the board had heard clearly what the legislature wants and that discussion needed to conclude on the topic. Chair Wheeler asked for a pulse of the board on the topic. Wayne Lewis stated that he didn't necessarily see this issue as a vote or "choosing sides." He noted that, given the circumstances, the board could approach this as working with the framework of SB1, while still incentivizing (within the framework) the behaviors that the board wishes to see from schools and districts. Commissioner Pruitt explained that many business rules for this indicator of the system are still being defined, which will allow for rigorous processes to be developed. Following discussion, the board ultimately agreed to the proposed changes presented by KDE staff.

Sims reminded the board of the final change related to the "Transition Readiness" indicator, which was the removal of the third path relating to military readiness. Sims stated that the recommendation for removal was a result of disagreement among many shareholders, including military and JROTC representatives, regarding the use of the ASVAB assessment and other measures associated with this path. Sims also shared one clarifying amendment regarding the state's alternate diploma students (page 11 of the regulation), citing that they would only be required to demonstrate one academic or career readiness measure. No questions were noted by board members.

Sims then began addressing the remainder of the public comments and proposed changes within the regulation. Sims stated that the remainder of the changes were more clarifying in nature. Specific to the achievement gap closure indicator, Sims cited pages 14-15 where clarifying amendments were proposed, which provide additional detail regarding the various technical calculations regarding this measure. Board member Bill Twyman noted the difficulty of this measure, while also citing its potential for improving the overall performance of a school and district when intentional focus is placed on this measure.

Sims then moved to the growth indicator of the system. Sims summarized the public comments received and the recommended changes to the regulation as a result of those comments. Beginning on pages 5 and 16 of the regulation, Sims reviewed the proposed amendment related to the insertion of a growth value table. She also noted a proposed amendment on page 18 of the

regulation that clarified the inclusion of all students within the growth measure and that English Learners are included for their acquisition of the English language.

Sims summarized the remainder of the public comments that were more general in nature. Sims noted page 22 of the regulation, which provides recommended amendments that clarify all indicators of the accountability system will be part of the standard-setting process. Sims also noted the need for clarifying language related to the measures that limit a school or district from achieving higher than a 3-star rating. She noted that proposed language to accomplish this was found on page 22 of the regulation. Some discussion was had among board members and advisors regarding the statistical tests associated with this indicator of the system and KDE staff agreed to address concerns within the business rules associated with the standard-setting process. The last proposed amendment noted by Sims related to the definition of the consolidated student group.

Following final discussion, Chair Wheeler called for a motion on the SOC for 703 KAR 5:270. Prior to a formal motion, General Counsel Brown restated the changes that surfaced from the board's discussion. A motion for approval of the amended SOC was made by Marcum and seconded by Sam Hinkle. The motion carried by unanimous voice vote.

IV.B. Statements of Consideration for

- **701 KAR 8:010, Charter school student application, lottery, and enrollment;**
- **701 KAR 8:020, Evaluation of charter school authorizers;**
- **701 KAR 8:030, Charter school appeal process; and**
- **701 KAR 8:040, Conversion charter school petition, conversion, and operation.**

KDE Associate Commissioner and General Counsel Kevin Brown, KDE Assistant General Counsel Amy Peabody and KDE Division Director Earl Simms began by discussing the SOC for 701 KAR 8:010. Peabody began by summarizing the public comments received on this administrative regulation. She noted that a substantial number of comments came from students and parents from the Model Lab School, citing their concerns over the lottery process, should the school choose to become a charter school. Peabody noted the passion and thoughtfulness of these concerns; however, she went on to explain that a statutory change would be required in order to alleviate such concerns.

The first proposed amendment that was presented as a result of public comment related to the lottery monitor and who is responsible for choosing the monitor. KDE staff felt that more specificity could be given to Section 3(15) regarding this process. Wayne Lewis said that his understanding, based on language within the regulation, was that the charter school would be the one to select the lottery monitor and an appeal mechanism already exists within the regulation, should someone feel that an inappropriate monitor has been chosen. He cited concern that this requirement added an unnecessary element to the contract between the school and the authorizer. Peabody felt that the proposed amendment provided some flexibility to the authorizer. After much discussion, the board agreed to amend the change to state "... who shall be selected by the charter school."

Peabody moved on to the second proposed amendment, which related to lengthening the amount of time required for the retention of lottery records. She noted that the change was reflected in Section

3(1)(d). No questions were posed by the board on this change. The next proposed change related to enrollment information pertaining to special education students. Peabody explained that, in order to ensure the prevention of discrimination against a student applicant by a charter school, a proposed amendment to Section 4(4) to prohibit a charter school from requesting or requiring special education disability or status from a student applicant, except to the extent allowed by the authorizer in the charter contract for providing a special needs student an enrollment preference. Peabody explained that the public comments received indicated a fear of "cherry picking" by charter schools and that KDE staff felt the proposed language prevented this from occurring. Ben Cundiff asked if traditional public schools were subject to this same requirement. General Counsel Brown clarified that traditional public schools are not permitted to ask such questions, as they are required to service any student who is assigned to that school. Lewis asked if the same was applicable to magnet schools within a particular district. Peabody explained that magnet schools are treated differently, as they are permitted to have application and enrollment preferences. In this same section of the regulation, Lewis inquired as to the meaning of "at risk" information and the use of that in the application process. Peabody explained that the term was defined with the definitions section of the regulation. Lewis suggested that future policy and guidance documents should address what is expected regarding this requirement of the application.

Peabody then noted the next proposed amendment, which deals with regional achievement zone charter schools and different authorizers. Peabody indicated that the regulation had been amended in multiple locations to account for the scenario of regional achievement zones, amending language to say "residence within the charter school boundaries" rather than residence in the local school district. Peabody explained that this phrasing accounts for those charter schools that are not limited to a single resident school district and its students.

The next proposed amendment discussed by Peabody pertained to the recommendation that an official written notice, not just notice published on a school's website, should be given to student applicants and their families as it relates to the lottery and student enrollment requirements. Peabody indicated that KDE agreed with this recommendation and, therefore, amended the regulation accordingly on pages 8-9 and 11. Following questions, Peabody explained that this notice would only apply to applicants from which contact information can be collected from the application (email address, phone number for text messages or mailing address for printed correspondence). There was consensus among board members to insert additional language into the regulation to clarify that the notice applies to those who have officially submitted an application to the school.

Peabody summarized the remaining public comments; however, she noted no additional changes to the regulation that were proposed or discussed as a result of those comments. A friendly amendment, offered by Gary Houchens and Lewis, was recommended for the language found within the SOC for KDE's response to public comment #20, which was to strike the language "to ensure the prohibitions in Kentucky law, on discrimination and cherry-picking of students by charter schools" and replace it with "to ensure fairness and consistency with the student application."

Following final discussion on 701 KAR 8:010, Chair Wheeler requested that the board's discussion shift to the second SOC for 701 KAR 8:020. In the interest of time, Peabody began reviewing

proposed changes to the regulation directly, citing the public comments that prompted such. The first change discussed related to unilaterally imposed conditions on page 6 of the regulation. There was consensus of the board to include the amended language of "or attempts to place"

The next proposed amendment discussed by the board related to authorizer training hours. Peabody explained that it was recommended that the regulation mirror the minimum training hours required for local school board members outlined in KRS 160.180(6). Lewis inquired about the significance of eight (8) years of experience and why the training hours are reduced after that time. Peabody explained that this is the same requirement for local school board members and signifies that a board member has completed two four-year terms on the local board; thus, reducing the need for as extensive training. Lewis said that the timeframe to complete the training was still unclear. Peabody explained that this was to be annual training; however, she acknowledged a mistake in the language proposed for striking and agreed to correct this mistake to clarify that the training was required annually. Lewis also inquired about the necessity of the additional training requirements that were included within the amendments. Peabody explained that the additional training topics aligned to the professional learning needs for authorizers who may be providing services to particular populations of students.

Nawanna Privett asked about the possibility of the model charter contract being incorporated by reference, as recommended by the Kentucky School Board Association (KSBA) through its public comments. Peabody explained that previous discussion by the board had indicated the desire to use the model contract as a guidance document, but not a document incorporated by reference. Simms stated that doing so provided more flexibility between the charter school and the authorizer.

Bill Twyman inquired about the laws pertaining to the removal of an authorizer, should the training requirements not be met. Twyman noted that neglect to adhere to the mandated training requirements can result in the removal of a local school board member. Peabody explained that this had not been reviewed or discussed, but that she believed there to be provisions within existing statutes to take care of any neglect of duty by an authorizer.

Lewis referenced page 22, line 6 of the regulation where it discusses returning students. Lewis offered an amendment to replace the term "the" with "any" in the sentence "the returning student." There was consensus among the board to make this edit. Lewis also referenced page 35 of the regulation where the disaggregation of student information is discussed for annual reporting. Specifically, Lewis inquired about the need for disaggregation by age. KDE staff agreed to replace the term "age" with "level," meaning grade level (elementary, middle or high). Staff also agreed to include Free and Reduced-Price Lunch (FRPL) in the disaggregation categories, as the recommendation of Lewis. No concerns were noted by board members.

Lewis then inquired about the proposed amendment on page 36, line 6 of the regulation that speaks to the required annual reporting of charter school authorizers and their respective schools in regard to relationships with education service providers. Lewis noted that most of the requirements within the report to date have aligned to outcomes; however, he expressed concern that the addition of this new information may be more investigative in nature. Lewis expressed concern that KDE may not have access to such information on these contracts. Peabody explained that this change resulted from a public comment that referenced a 2016 Office of the Inspector General audit report of

charter schools and financial transparency issues. Twyman stated his belief that this requirement is meant to ensure charter school success. The board had deep discussion on how this requirement would be included in the Commissioner's annual report to the Legislative Research Commission (LRC) and other entities. Privett noted the importance of such internal controls at the federal, state and local levels. Simms explained that the intent would be to gather as much of the information for this requirement from the application and other existing documentation. Houchens expressed concern that this amendment would be asking the Commissioner to make generalizations about education service providers and problems that may be arising from their relationships with charter schools. Sam Hinkle expressed his desire to keep the amendment as it is written, citing the importance for the board and other shareholders to hear the Commissioner's perspective on important issues such as this. Commissioner Pruitt explained that he believed this requirement could be fulfilled through existing data sources and information collected by the KDE, citing his authority to investigate further when concerns arise at a charter school level. Chair Wheeler asked for any final discussion on 701 KAR 8:010 and 701 KAR 8:020, prior to her call for a vote on each regulation. Lewis inquired about the application associated with 701 KAR 8:010 and if the board planned to discuss the proposed changes to that document incorporated by reference. Peabody indicated that there were no public comments received on the student application and that no changes were proposed. A motion for approval of the amendments to 701 KAR 8:020 as a result of the SOC was made by Hinkle and seconded by Rich Gimmel. The motion carried with a unanimous voice vote. Gimmel then moved to approve amendments to 701 KAR 8:010 as a result of the SOC. The motion was seconded by Houchens and the motion passed with voice vote.

VII. Announcements

Chair Wheeler stated that the additional items not yet discussed would be tabled until the following day's regular meeting agenda. Those items were:

- *701 KAR 8:030, Charter school appeal process;*
- *701 KAR 8:040, Conversion charter school petition, conversion, and operation;*
- *704 KAR 3:370, Kentucky framework for personnel evaluation;*
- *Approval of KBE Budget and Policy Priorities for the 2018 Regular Session of the Kentucky General Assembly; and*
- *Settlement of United States Department of Education, Office of Civil Rights (OCR) Complaint.*

VIII. Adjournment

A motion to adjourn was made by Sam Hinkle and seconded by Roger Marcum. The motion carried by voice vote and the special meeting was adjourned at 6:14 p.m. ET. Following adjournment, KBE members and advisers convened for an annual holiday dinner prepared by the culinary arts students from the Kentucky School for the Deaf. No official business was conducted during the holiday dinner.