

**KENTUCKY DEPARTMENT OF EDUCATION
NONRESIDENT STUDENT AGREEMENT FOR 2014-2015 SCHOOL YEAR
APPEAL NO. 2014-01**

**BOARD OF EDUCATION FOR THE
WARREN COUNTY SCHOOL DISTRICT**

**APPELLANT AND
CROSS-APPELLEE**

v.

**BOARD OF EDUCATION FOR THE
BOWLING GREEN INDEPENDENT
SCHOOL DISTRICT**

**APPELLEE AND
CROSS-APPELLANT**

APPELLEE'S POST-HEARING BRIEF

Regina A. Jackson
Michael A. Owsley
Jessica R. Surber
ENGLISH, LUCAS, PRIEST & OWSLEY, LLP
1101 College Street; P.O. Box 770
Bowling Green, KY 42102-0770
Phone: (270) 781-6500
Fax: (270) 782-7782
Email: rjackson@elpolaw.com
mowsley@elpolaw.com
jrsurber@elpolaw.com
Attorneys for Appellee

EXHIBIT 4

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTUAL BACKGROUND	2
ARGUMENT	6
I. The doctrine of issue preclusion requires the Commissioner to find in Bowling Green Independent's favor.....	6
II. There is strong evidence that Warren County intends to continue to reduce the number of nonresident students it permits to attend Bowling Green Independent to zero over a period of time	9
III. The decrease in students allowed under the nonresident agreement between Bowling Green Independent and Warren County has a disproportionate negative impact on Bowling Green Independent	12
A. Student Demographics.....	12
1. Enrollment	17
2. Minority Students	23
3. Limited English Proficiency	28
4. Free and Reduced Lunch	31
5. Special Education	33
B. District Achievements	37
1. Gifted and Talented	37
2. District Achievement	38
3. Standardized Testing	41
4. Grade Point Average	45
5. Programming	45
C. Facilities	48
1. Construction and Facilities	48
2. Bonding Potential	51
D. Staffing	52

E. Financial Impact	53
F. Impact on Families	61
IV. The Commissioner's Order allowing 750 students to attend Bowling Green Independent was not based on the number of CDE students attending Bowling Green Independent.....	64
V. Bowling Green Independent has appropriately handled students who move from Bowling Green Independent to Warren County throughout the school year.....	65
VI. The Commissioner's Order should not address Bowling Green Independent's internal policy regarding the admission of nonresident students	66
CONCLUSION	70
CERTIFICATE OF SERVICE.....	72

**KENTUCKY DEPARTMENT OF EDUCATION
NONRESIDENT STUDENT AGREEMENT FOR 2014-2015 SCHOOL YEAR
APPEAL NO. 2014-01**

**BOARD OF EDUCATION FOR THE
WARREN COUNTY SCHOOL DISTRICT**

**APPELLANT AND
CROSS-APPELLEE**

VS.

APPELLEE'S POST-HEARING BRIEF

**BOARD OF EDUCATION FOR THE
BOWLING GREEN INDEPENDENT
SCHOOL DISTRICT**

**APPELLEE AND
CROSS-APPELLANT**

The Board of Education of the Bowling Green Independent School District, for its post-hearing brief in this appeal, states as follows:

INTRODUCTION

This appeal has been taken by the Board of Education of the Warren County School District (hereinafter referred to as "Warren County Board") against the Board of Education of the Bowling Green Independent School District (hereinafter referred to as "Bowling Green Board") pursuant to KRS 157.350. The Bowling Green Board has also filed a cross-appeal against the Warren County Board. KRS 157.350 provides that school districts may enter into nonresident student agreements allowing residents of one school district to attend another school district, with the Support Education Excellence in Kentucky ("SEEK") funds for that student being paid to the school district where the student is attending, regardless of the student's residence. If an agreement between districts cannot be reached, KRS 157.350(4)(a) provides that either board may appeal. This appeal stems from a disagreement between the Bowling Green Board and the Warren County Board regarding the nonresident student agreement for the 2014-2015 school year.

FACTUAL BACKGROUND

Prior to 2001, the Bowling Green Independent School District ("Bowling Green Independent") and the Warren County School District ("Warren County") entered into nonresident agreements allowing the free exchange of all students between the two districts pursuant to KRS 157.350. In early 2001, significant controversy arose in the Bowling Green and Warren County community as a result of the Warren County Board's action reducing the number of Warren County residents permitted to attend Bowling Green Independent under the nonresident agreement for 2001-2002.¹ After negotiations following the Warren County Board's decision, the two districts entered into a Memorandum of Agreement and Understanding Regarding Non-Resident Student Contracts ("Memorandum of Agreement") on June 1, 2001, providing the mechanism for determining the number of students for which Warren County would release SEEK funding to Bowling Green Independent under annual nonresident contracts.² This agreement provided that each year the current number of Warren County students attending Bowling Green Independent would be permitted to attend in addition to a growth factor equal to the percentage of student growth experienced by Warren County in the previous year.³ In 2008, Warren County unilaterally amended the Memorandum of Agreement to temporarily remove the growth factor by striking through the growth factor on the nonresident student agreement. Warren County approved similar annual contracts for the 2008-2009 through the 2012-2013 school years.⁴ Through the 2012-2013 school year, the number of students that Warren County has permitted to attend Bowling Green Independent has never decreased.

¹ See, Joint Exhibit 1 (video deposition of John Settle, bates nos. 788-793, and Petitioner's Exhibit (hereinafter "PE" when referring to Petitioner's Exhibits in 2013 record) 5, bates nos. 867-886).

² *Id.*

³ See, Joint Exhibit 1 (Joint Exhibit (hereinafter "JE" when referring to Joint Exhibits in 2013 record), bates nos. 1390-1391).

⁴ See, Joint Exhibit I at JE 2, bates nos. 1402-1406.

For the first time since entering into the Memorandum of Agreement, Warren County did not approve an agreement with Bowling Green Independent for the 2013-2014 school year. Instead, in April of 2013, Warren County voted to reduce the number of nonresident students permitted to attend Bowling Green Independent without any notice to Bowling Green Independent. As a result, Bowling Green Independent was forced to appeal. On May 24, 2013, the Bowling Green Board initiated an appeal regarding the 2013-2014 nonresident agreement with the Warren County Board. A three-day hearing on the appeal was held on July 11-13, 2013. Following the hearing, Hearing Officer, Mike Wilson ("Hearing Officer"), recommended that 750 Warren County resident students be permitted to attend Bowling Green Independent with SEEK funding to follow the students for the 2013-2014 and the 2014-2015 school years. This was the number of students sought by Bowling Green Independent. He further recommended that the parties reach a new agreement prior to the 2015-2016 school year. In his Final Order, the Commissioner of Education ("Commissioner") agreed with the Hearing Officer's recommendation for the 2013-2014 school year but did not extend his recommendations to the 2014-2015 school year. The Commissioner ordered the Bowling Green Board and the Warren County Board to reach an agreement for the 2014-2015 school year, and if an agreement could not be reached by April 1, 2014 to participate in mediation. The Commissioner also found that the Memorandum of Agreement, including the growth factor, "provides a good guide for future non-resident arrangements between the two school districts."⁵

On December 17, 2013, the Warren County Board approved a proposed nonresident agreement for the 2014-2015 school year that would allow 700 Warren County resident students to attend Bowling Green Independent with SEEK funding following the students.⁶ The proposed

⁵ See, Joint Exhibit 1, (Commissioner's Final Order, p. 61, bates no. 467).

⁶ See, Joint Exhibits 5 and 6.

agreement would have also reduced the number of Warren County resident students permitted to attend Bowling Green Independent by 500 over a 10-year period by reducing the number by 50 students each year for 10 years. This proposed nonresident agreement included a random draw process to determine which new students would be permitted to attend Bowling Green Independent.

On December 20, 2013, the Bowling Green Board approved its own proposed nonresident agreement that would have permitted 746 Warren County resident students to attend Bowling Green Independent during the 2014-2015 school year, with SEEK funding following those students, and would have reduced that number by 40 over a 10-year period by reducing the number by 4 students each year.⁷ On January 13, 2014, the Warren County Board rejected the Bowling Green Board's proposed agreement.⁸

On February 8, 2014, the Bowling Green Board and the Warren County Board participated in mediation pursuant to the Commissioner's Order. Unfortunately, the parties did not reach an agreement at mediation.⁹ In an additional attempt to resolve this matter without the need for appeal, on February 17, 2014, the Bowling Green Board approved a second proposed nonresident student agreement.¹⁰ This agreement would have allowed 740 Warren County resident students to attend Bowling Green Independent during the 2014-2015 school year, with SEEK funding following those students, and would have reduced the number by 100 over a 10-year period by reducing the number of nonresident students under the agreement by 10 each year. In response to the Warren County Board's concerns regarding Bowling Green Independent's admission process, the Bowling Green Board included in this second proposed

⁷ See, Joint Exhibits 3 and 7.

⁸ See, Joint Exhibit 8.

⁹ See, testimony of Mike Bishop.

¹⁰ See, Joint Exhibits 4 and 9.

nonresident student agreement a process that would determine which new students would be admitted to Bowling Green Independent based upon date of application. This process was proposed by the Bowling Green Board in part because it was suggested by Warren County during last year's nonresident student agreement appeal as an acceptable option.¹¹ In its post-hearing brief, when addressing Bowling Green Independent's priority policy, Warren County stated "[w]hy not use a lottery system or a 'first come/first served' policy?"¹²

The Bowling Green Board remains perplexed at Warren County's repeated statements during the hearing regarding its desire to reach a compromise. The Bowling Green Board came to the mediation with all 5 of its members, prepared to make a binding decision, while the Warren County Board had only 2 of its members in attendance.¹³ The Bowling Green Board also made the last 2 proposals for a nonresident student agreement. Instead of making an additional proposal in an attempt to reach an agreement, on February 20, 2014, the Warren County Board voted not to accept Bowling Green Independent's second proposed agreement and voted to initiate this appeal.¹⁴ In its appeal, the Warren County Board requests the Commissioner to issue an order only allowing those Warren County residents currently enrolled in Bowling Green Independent and their siblings to enroll in Bowling Green Independent for the 2014-2015 school year. On March 10, 2014, the Bowling Green Board voted to initiate a cross-appeal.¹⁵ Bowling Green Independent's cross-appeal requests the Commissioner to resolve the nonresident student dispute by allowing a minimum of 750 Warren County resident students (the number previously approved by the Commissioner) to attend Bowling Green Independent for the 2014-2015 school year, with SEEK funding following those students. Bowling Green

¹¹ See, testimony of Timius; see also, Joint Exhibit 1(Warren County's post-hearing brief, bates no. 0229).

¹² *Id.*

¹³ See, testimony of Mike Bishop.

¹⁴ See, Joint Exhibit 10.

¹⁵ See, Joint Exhibit 11.

Independent's appeal also requests the Commissioner to allow additional Warren County resident students to attend Bowling Green Independent by applying the growth factor contained in the Memorandum of Agreement.

ARGUMENT

I. The doctrine of issue preclusion requires the Commissioner to find in Bowling Green Independent's favor.

Warren County's only justification for reducing the number of students permitted to attend Bowling Green Independent under the nonresident agreement between the districts continues to be that these students will financially benefit Warren County.¹⁶ This rationale was Warren County's argument last year as well. After considering this justification, the Commissioner found that "[t]hough SEEK money follows the students, the students themselves are more important in this case than the dollars."¹⁷ The Commissioner went on to find that "Warren County is growing, not shrinking, and has no pressing financial need to increase its population by reducing the number of Warren County residents it permits to attend Bowling Green."¹⁸ Because the financial impact on Warren County of an additional 41 or 55¹⁹ children can be no more than the financial impact of the additional 86 children at issue in last year's hearing, issue preclusion applies to require a decision in Bowling Green Independent's favor.

Four factors must be present for issue preclusion to apply. These factors are: (1) the issue in the first case must be the same as in the second case; (2) the issue must have actually been

¹⁶ See, testimony of Kerry Young, Warren County Board Chairman.

¹⁷ See, Joint Exhibit 1 (Commissioner's Final Order, page 59, bates no. 465).

¹⁸ *Id.*

¹⁹ Bowling Green Independent maintains that 55 Warren County resident students are at issue in this appeal. This number represents the number of Warren County seniors graduating from Bowling Green Independent (92) minus the number of siblings that will be admitted next year (37). Because the end of year reconciliation process will bring the number of Warren County residents attending Bowling Green Independent under the 750 cap, the number will potentially be greater than 55, but Bowling Green Independent used 55 as a conservative estimate based on the reasoning above.

litigated; (3) the issue was actually decided in the earlier action; and (4) decision on the issue was necessary to the judgment.²⁰

The first factor, which requires that the issues be identical, does not require that the second suit be based on the same cause of action as the first suit.²¹ Therefore, even though this year's appeal is based on a new nonresident agreement dispute and the actual number of students differs slightly, because the issue of the lack of a compelling financial impact on Warren County is identical, issue preclusion should apply. Comment c. to the Restatement (Second) of Judgments § 27 is instructive in this situation. It states:

When there is a lack of total identity between the particular matter presented in the second action and that presented in the first, there are several factors that should be considered in deciding whether for purposes of the rule of this Section the "issue" in the two proceedings is the same, for example: **Is there a substantial overlap between the evidence or argument to be advanced in the second proceeding that advanced in the first? Does the new evidence or argument involve application of the same rule of law as that involved in the prior proceeding?...How closely related are the claims involved in the two proceedings?** (emphasis added)

....

Sometimes, there is a lack of total identity between the matters involved in the two proceedings...In some such instances, the overlap is so substantial that preclusion is plainly appropriate.²²

In the present situation, the overlap of the facts and issues is so substantial that issue preclusion is appropriate despite the fact that the actual number of students at issue is not identical. The only practical effect that is attributable to the difference in the nonresident student number at issue is that any financial benefit to Warren County this year from the additional students is even *less* than the financial benefit last year, which the Commissioner did not find substantial enough to warrant a reduction in the nonresident student number. During last year's

²⁰ *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 465 (Ky. 1998).

²¹ *Napier v. Jones By and Through Reynolds*, 925 S.W.2d 193, 196 (Ky.App. 1996).

²² Comment c. to the Restatement (Second) of Judgments § 27.

hearing, Chris McIntyre ("McIntyre"), Warren County's Director of Finance, presented an exhibit projecting the annual benefit to Warren County of these students after their kindergarten year to be just over \$132,000 with projected revenue of approximately \$330,000.²³ This year, the projected annual benefit to Warren County ranges from a loss of approximately \$30,000 to a gain of up to approximately \$110,000 with projected revenue of approximately \$112,000 to \$116,000.²⁴ When not giving consideration to some students receiving half of the state allocated SEEK funds for their kindergarten year, the revenue attributable to these students would be between \$160,351 for 41 students and \$215,105 for 55 students. Any potential revenue or benefit to Warren County this year remains less than any potential revenue or benefit to Warren County at issue in the previous appeal. Additionally, Warren County's financial position is currently better than it was during the previous appeal.²⁵

The next two elements, requiring that the issue has been fully litigated and decided, also require that the party against whom issue preclusion is sought to be applied "had a realistically full and fair opportunity to litigate the issue."²⁶ Warren County based its case last year on the fact that it would receive a financial benefit sufficient to justify the reduction in the number of its residents it permitted to attend Bowling Green Independent. As such, it had a full and fair opportunity to litigate this issue during last year's nonresident student appeal hearing. When the Commissioner decided that any financial benefit to Warren County was not sufficient to warrant a reduction, and Warren County did not appeal, the issue was finally decided in the earlier action, thus satisfying the third element.

²³ See, Joint Exhibit I (Document admitted through Chris McIntyre during 2013 hearing, bates no. 1387).

²⁴ See, Warren County's Exhibit 13.

²⁵ See *infra*, Section II(E) - Financial Impact.

²⁶ *Goebel v. Arnett*, 259 S.W.3d 489, 492 (Ky.App. 2007).

In order for issue preclusion to apply, the issue must have also been necessary to the earlier judgment. Because Warren County justified its decision to reduce the number of students it permitted to attend Bowling Green Independent by citing the positive financial impact Warren County would experience due to the reduction, this issue was necessary to the decision on last year's appeal. The Commissioner was required to determine whether any potential financial gain Warren County would experience was a sufficient justification for the reduction. Because the Commissioner decided any such gain was not sufficient to justify a reduction in the number of Warren County residents permitted to attend Bowling Green Independent, issue preclusion applies in this case and warrants a decision in Bowling Green Independent's favor.

Issue preclusion applies in this case even though the prior decision was administrative in nature. In Kentucky, "the decisions of administrative agencies acting in a judicial capacity are entitled to the same res judicata effect as judgments of a court."²⁷ An administrative agency acts in a judicial capacity "when it hears evidence, gives parties an opportunity to brief and argue their versions of the facts, and gives parties an opportunity to seek court review of these findings."²⁸ Because the administrative hearing involving last year's nonresident student disagreement was conducted in this manner, issue preclusion is applicable.

II. There is strong evidence that Warren County intends to continue to reduce the number of nonresident students it permits to attend Bowling Green Independent to zero over a period of time.

Warren County's actions surrounding this year's appeal and statements made by members of the Warren County Board over the course of the disagreement between the districts provide compelling evidence that Warren County plans to continue reducing the number of students permitted to attend Bowling Green Independent with SEEK funds following and

²⁷ *Godbey v. University Hospital of Albert B. Chandler Medical Center, Inc.*, 975 S.W.2d 104, 105 (Ky.App. 1998).

²⁸ *Presbyterian Child Welfare Agency of Buckhorn, Kentucky, Inc. v. Nelson County Board of Adjustment*, 185 F.Supp. 2d 716, 722 (W.D.Ky. 2001) (citing *Nelson v. Jefferson County*, 863 F.2d 18, 19).

eventually intends to reduce this number to zero. Not only have several Warren County Board members suggested that the Warren County Board will continue down this path, but the nonresident agreement approved by the Warren County Board on December 17, 2013, confirms a clear intent to continue to reduce the number of students over the next 10 years and gives no indication that reduction will stop at the end of the 10-year period.²⁹ The Warren County Board's action in attempting to reduce the number of nonresident students under the agreement with the Bowling Green Board for the second year in a row also shows a pattern and further demonstrates the Warren County Board's intent to continue these reductions each year.

During the hearing regarding the nonresident student agreement between the Bowling Green Board and the Warren County Board for the 2013-2014 school year, Ron Sowell ("Sowell") testified that Warren County Board member Don Basham ("Basham") told him that it was the Warren County Board's intent to lower the number of Warren County resident students allowed to attend Bowling Green Independent to zero.³⁰ Basham admitted during the hearing that he told Sowell if resources continue to diminish, the Warren County Board "may have to continue to decrease the amount of kids...And zero may be the result. Or one to one..."³¹ When asked whether he believed this result is where the Warren County Board was headed, Basham stated "...[r]ight now, the future looks like we will all be fighting for resources for many years out."³² Joseph Meyer testified at the hearing that Warren County Board member Garry Chaffin ("Chaffin") told him that the Warren County Board wanted to either go to zero or go to a one-to-

²⁹ See, Joint Exhibit 5.

³⁰ See, Joint Exhibit 1 (testimony of Sowell, p. 553 of hearing transcript bates no. 655).

³¹ See, Joint Exhibit 1 (testimony of Basham, pp. 513-514 of hearing transcript, bates no. 645).

³² *Id.*

one ratio of Bowling Green Independent residents attending Warren County and Warren County residents attending Bowling Green Independent.³³

The statements from current Warren County Board members demonstrate that the Warren County Board does not intend the reduction in the number of students allowed under the nonresident agreement with the Bowling Green Board for the 2014-2015 school year to be a one-time reduction. Basham and Chaffin's statements also provide strong evidence that the Warren County Board will continue to attempt to reduce the number of nonresident students permitted to attend Bowling Green Independent even beyond the 10-year period set forth in the nonresident agreement approved by Warren County on December 17, 2013.

Even though Warren County's last proposed nonresident student agreement with Bowling Green Independent suggested a reduction of 50 students per year, it appears based on Warren County's appeal that it now proposes a more rapid reduction. Warren County's appeal requests that only current students and their siblings be permitted to attend Bowling Green Independent with SEEK funds following the students. Using this formula, the number of Warren County residents attending Bowling Green Independent will reduce at a much more rapid pace than 50 students per year.³⁴

Dr. Susane Leguizamon, a Professor of Economics at Western Kentucky University, analyzed the impact of allowing only currently enrolled students and their siblings to enroll in Bowling Green Independent.³⁵ Under her analysis, in 10 years (2023-2024) there would be only 212 Warren County residents enrolled in Bowling Green Independent.³⁶ This is 38 fewer students than would have been allowed under Warren County's proposal to reduce the number

³³ See, Joint Exhibit 1 (testimony of Joseph Meyer, pp. 605-606 of hearing transcript, bates no. 668).

³⁴ See, Bowling Green Independent Exhibit 5 and testimony of Dr. Susane Leguizamon.

³⁵ *Id.*

³⁶ See, Bowling Green Independent Exhibit 5.

by 50 students each year. Furthermore, if Warren County continues to propose that siblings be the only new Warren County residents permitted to enroll in Bowling Green Independent, by the year 2032-2033, the number of Warren County residents attending Bowling Green Independent will be in the single digits, and will reach zero by the year 2036-2037.³⁷ Based on Warren County's appeal and its board members' repeated statements to members of the community, it is clear that Warren County fully intends to continue its reduction of the number of Warren County residents permitted to attend Bowling Green Independent with SEEK funding following the students.

III. The decrease in students allowed under the nonresident agreement between Bowling Green Independent and Warren County has a disproportionate negative impact on Bowling Green Independent.

The decrease in the number of Warren County students attending Bowling Green Independent will actually create the problems within Bowling Green Independent that the Commissioner has sought to prevent in his opinions in other cases and in the appeal between these parties for the 2013-2014 school year. This section will address the impact on Bowling Green Independent based on the reduction of 55 students for the 2014-2015 school year. Because Warren County has indicated it will continue to decrease the number of students permitted to attend Bowling Green Independent each year, our brief will address the long-term impact of such a continued reduction as well.

A. Student Demographics

Before discussing specific categories of student demographics, it is important to understand the minor discrepancies in the number of Warren County residents attending Bowling Green Independent. In response to an open records request from Warren County, Bowling Green Independent disclosed that as of March 14, 2014, 726 Warren County residents were attending

³⁷ *Id.*

Bowling Green Independent during the 2013-2014 school year.³⁸ This number does not include children of district employees ("CDE"), who are no longer included in nonresident student agreements. Warren County disclosed that between 72 and 75 Bowling Green Independent residents were attending Warren County during the 2013-2014 school year.³⁹ After exchanging lists of each districts' total enrollment in April of 2014, Warren County identified 78 students about which it had questions.⁴⁰ After conducting an investigation into these 78 students, Bowling Green Independent determined that 39 of those students should be included in the Warren County nonresident number, bringing the total number of Warren County nonresidents to 765.⁴¹ During this investigation, Bowling Green Independent identified 9 students that should be removed from the list (6 were students temporarily residing in the Children's Crisis Stabilization Unit or the Warren Regional Juvenile Detention Center, 2 were residents of another county, and 1 was a Bowling Green Independent resident).⁴² Bowling Green Independent also discovered 8 additional students that should be added to the list, bringing the total number of Warren County residents attending Bowling Green Independent to 764.⁴³ At this point, on April 28, 2014, Bowling Green Independent revised its exhibits to include the addition and removal of these students.⁴⁴

During this same time period, Bowling Green Independent identified several Warren County residents about which it had questions. Of these, Warren County confirmed that 7 students should have been included in its count of Bowling Green Independent resident

³⁸ See, Joint Exhibit 17, part 2.

³⁹ See, Joint Exhibits 18 and 20 (Totals vary between these two exhibits which were presumably calculated at different points within the school year. This change further emphasizes the fluid nature of the nonresident student lists throughout the school year.)

⁴⁰ See, testimony of Tinius and Lawson.

⁴¹ See, testimony of Lawson.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Revised exhibits are provided where appropriate in front of yellow divider pages, with the original, unrevised exhibits behind the yellow divider pages in the Exhibit books.

students.⁴⁵ This brought the total number of Bowling Green Independent residents attending Warren County to between 79 and 82.

During the first day of the hearing, Warren County identified 3 CDE students whose parents were no longer employed by Bowling Green Independent, meaning these students should be added to the Warren County nonresident list.⁴⁶ Warren County also identified 16 additional students that appeared on the December 2013 nonresident student list Jon Lawson ("Lawson") delivered to Warren County, but did not appear on the lists of 726 or 764 students delivered to Warren County in April of 2014.⁴⁷ Once these students were identified, Bowling Green Independent promptly began an investigation and found that 13 of the 16 should be classified as Warren County nonresidents.⁴⁸ However, these students were misclassified because of a software error by Infinite Campus (the state-mandated program used by all school districts to track student data), and through no fault of Bowling Green Independent employees.⁴⁹ The remaining 3 students should not have been classified as Warren County residents and were correctly coded.⁵⁰ Bowling Green Independent also identified 5 of the 39 students added to the nonresident student list that should no longer be included because they had withdrawn, had a Bowling Green Independent address, or were classified as CDE.⁵¹ After all adjustments were made at the hearing, the total number of Warren County residents attending Bowling Green Independent was determined to be 775 as of May 3, 2014.⁵²

This change in the numbers demonstrates that the number of nonresident students attending any district is a fluid number that can change on a daily basis. Neither Bowling Green

⁴⁵ See, Bowling Green Independent Exhibit 32.

⁴⁶ See, testimony of Tinius.

⁴⁷ See, testimony of Tinius.

⁴⁸ See, testimony of Lawson.

⁴⁹ See, testimony of Lawson and Bowling Green Independent Exhibit 40.

⁵⁰ See, testimony of Lawson.

⁵¹ See, testimony of Lawson.

⁵² See, testimony of Lawson.

Independent nor Warren County was without error. Bowling Green Independent's rate of error was 6.3% (49 out of 775) and Warren County's was between 8.5% (7 out of 82) and 8.9% (7 out of 79). These error rates are calculated based on the number of nonresident students each district was tasked with coding. Resident students do not require a separate code, and these students automatically default to resident status without any input by district staff.⁵³ Thus, Warren County's attempt to classify its error rate as approximately 0.05% (7 out of approximately 14,000) is misguided. If looked at in terms of rate of error based on the number of students each district is responsible for coding, Warren County actually had a higher rate of error than Bowling Green Independent.

In investigating the above-described errors, Bowling Green Independent identified 5 additional students (4 prior to the hearing and 1 during the hearing) that should have been included in the number of CDE students. This brought the total to 181 Warren County residents attending Bowling Green Independent classified as CDE. Unless otherwise noted, the analysis below is based on the revised exhibits provided by Bowling Green Independent using a nonresident number of 764 and CDE number of 180. Any minor changes in these numbers at the hearing do not significantly impact the analysis.

Warren County also contends that Bowling Green Independent Superintendent Joe Tinius ("Tinius") misrepresented the number of children whose parents were Bowling Green Independent employees to Warren County and the Hearing Officer last year. In April of 2013, Tinius and Pat Stewart ("Stewart"), Warren County Director of Student Services, had a discussion regarding House Bill 182 ("HB 182") and its change in classification of CDE students.⁵⁴ In follow-up to this conversation, Stewart e-mailed Tinius inquiring about the

⁵³ See, testimony of Lawson and Tinius.

⁵⁴ See, testimony of Tinius.

number of students in Bowling Green Independent that would be affected by HB 182.⁵⁵ In response, Tinius informed Stewart that an average over the past 5 years of the number of employees' children who lived in Warren County but attended Bowling Green Independent had been just over 100.⁵⁶ Tinius never told Stewart that the number for the 2013-2014 school year would be 100, and always made clear that the 100 number was simply an average over the past 5 years.⁵⁷ During the 2013-2014 school year, Bowling Green Independent determined it had 181 Warren County resident CDE students.⁵⁸

This number was higher than anticipated for several reasons. First, prior to HB 182, Bowling Green Independent had no need to separately track students of its district employees.⁵⁹ As such, the process of determining the approximately 100 average was not scientific, and consisted mainly of district staff reviewing the list of Warren County resident students and identifying known children of employees.⁶⁰ Because no tracking mechanism existed prior to the 2013-2014 school year for these students, the "just over 100" average that Tinius gave Stewart was Bowling Green Independent's best estimate based on the information available to it. Additionally, between the 2012-2013 and 2013-2014 school years, Bowling Green Independent had several employees retire and replaced those employees with new hires, several of whom had children that became enrolled in Bowling Green Independent.⁶¹ While this does not account for the entire discrepancy between 100 and 181, it did increase the number from the average over the past 5 years. While the number of CDE students attending Bowling Green Independent for 2013-2014 is higher than the average presented by Tinius over the past 5 years, Tinius made no

⁵⁵ See, Warren County Exhibit 23.

⁵⁶ *Id.*

⁵⁷ See, testimony of Tinius.

⁵⁸ See, testimony of Lawson and Tinius.

⁵⁹ See, testimony of Lawson and Tinius.

⁶⁰ See, testimony of Tinius.

⁶¹ See, testimony of Tinius.

misrepresentations regarding this number to either Warren County or the Hearing Officer during last year's hearing.

1. Enrollment

During the 2013-2014 school year, there were 3,933 students enrolled in Bowling Green Independent, excluding preschool.⁶² 3,079 (78.29%) of those students reside in the Bowling Green Independent School District or are CDE.⁶³ 854 (21.71%) of those students are not considered Bowling Green Independent School District resident students.⁶⁴ Of the total student enrollments, 764 (19.43%) reside in Warren County, and 66 (1.68%) reside in other school districts.⁶⁵ This does not include CDE students, who are treated as Bowling Green Independent residents. The 764 Warren County nonresident students represent 92.05% of the nonresident students attending Bowling Green Independent.⁶⁶ For a chart detailing Bowling Green Independent's enrollment for the years 2004-2005 through 2012-2013, see Joint Exhibit 1 at JE 17 (bates no. 1862). For a chart detailing Bowling Green Independent's enrollment for the years 2012-2013 and 2013-2014, see Joint Exhibit 17. For a chart detailing Warren County's total enrollment numbers for the years 2006-2007 through 2011-2012, as reported on Warren County's District Report Cards, see Joint Exhibit 1 at JE 18 (bates no. 1864). For charts detailing Warren County's enrollment for the years 2012-2013 and 2013-2014, see Joint Exhibit 18.

While it appears that the number of Bowling Green Independent residents attending the district has increased by 257 students between 2012-2013 and 2013-2014, that number is

⁶² See, Joint Exhibit 17.

⁶³ *Id.*, see also, testimony of Lawson.

⁶⁴ See, Joint Exhibit 17.

⁶⁵ *Id.* These numbers are significantly lower than 2012-2013 because of a change in classification of students whose parents are employed by the Bowling Green Independent Board of Education. These students are now classified as Children of District Employees ("CDE") and are treated as Bowling Green Independent resident students.

⁶⁶ *Id.*

misleading.⁶⁷ Of this number, 193 students are classified as CDE (192 represented in Joint Exhibit 23 plus 1 Warren County CDE student identified during Lawson's testimony).⁶⁸ That brings the total to 64. Of this 64, the 11 additional Warren County nonresidents identified during the testimony of Tinius must be removed, bringing the total to 53. Therefore, Bowling Green Independent only experienced internal growth of 53 students during the 2013-2014 school year.

Even though Bowling Green Independent experienced an unusual amount of internal growth during the last school year, the Commissioner has recognized that it is unlikely to experience much internal growth in the future.⁶⁹ Below is a chart depicting Bowling Green Independent's internal growth from 2004-2005 to 2012-2013:⁷⁰

School Year	Number of Resident Students	Growth
2012-2013	2789	7 (0.25%)
2011-2012	2782	13 (0.47%)
2010-2011	2769	44 (1.61%)
2009-2010	2725	68 (2.56%)
2008-2009	2657	15 (0.57%)
2007-2008	2642	28 (1.07%)
2006-2007	2614	8 (0.31%)
2005-2006	2606	6 (0.23%)
2004-2005	2600	---

As the chart above illustrates, Bowling Green Independent has only seen internal growth of more than 53 students one year since 2004-2005. Furthermore, Ron Cummings ("Cummings"), a real estate broker and agent with ERA Premier Realty Partners, testified that as of April 21, 2014, there were only 66 residential properties for sale within the Bowling Green

⁶⁷ *Id.*

⁶⁸ These CDE students were included in the number of Warren County nonresident students attending Bowling Green Independent in all years prior to 2013-2014.

⁶⁹ See, Joint Exhibit 1, (Commissioner's Final Order page 32, bates no. 438).

⁷⁰ See, Joint Exhibit 1 at (JE 17 for years 2004-2005 through 2011-2012, bates no. 1862). (These years do not include data for alternative schools, so information for 2012-2013 in this chart is different than 2012-2013 on Joint Exhibit 17. Data excluding alternative schools was used in this chart for uniformity.)

Independent School District, and of those only 23 homes were listed within the most popular price range, and the price range including these 23 homes actually goes up to \$50,000 above the most popular price range.⁷¹ Of those 23, only 1 was less than 10 years old.⁷² Cummings also testified that of the approximately 700 to 800 homes that are on the market at any given time in the Bowling Green/Warren County community, approximately 85% to 90% of those are within the Warren County School District.⁷³ Based on Bowling Green Independent's historically minimal internal growth, and the lack of available housing within Bowling Green Independent's boundaries as compared to availability within Warren County's boundaries, it is unlikely that Bowling Green Independent will experience any significant internal growth in the future.

The enrollment at certain Bowling Green Independent schools will be disproportionately affected by the reduced nonresident student agreement proposed by Warren County. The Warren County nonresident enrollment numbers for each school for the 2013-2014 school year are as follows: 14 students at Dishman McGinnis Elementary ("Dishman McGinnis"), 6 students at Parker-Bennett-Curry Elementary ("Parker-Bennett-Curry"), 140 students at Potter Gray Elementary ("Potter Gray"), 12 students at T.C. Cherry Elementary ("T.C. Cherry"), 120 students at W.R. McNeill Elementary ("McNeill"), 143 students at Bowling Green Junior High School ("BGJrHS"), 328 students at Bowling Green High School ("BGHS"), and 1 student at the Academy at 11th Street, an alternative school that typically services only Bowling Green Independent residents with the exception of students that become classified as nonresident during the school year.⁷⁴

⁷¹ See, testimony of Cummings.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See, Joint Exhibit 17.

Historically, between approximately 25% and 50% of the students enrolled at Potter Gray, McNeill, BGJrHS and BGHS are Warren County nonresident students.⁷⁵ The percentages are slightly lower for the 2013-2014 school year because of the change in classification for CDE students. For the 2013-2014 school year, 31.75% of Potter Gray students, 29.48% of McNeill students, 16.46% of BGJrHS students, and 27.29% of BGHS students were Warren County nonresident students.⁷⁶ For the 2004-2005 school year through the 2013-2014 school year, an average of 39.2% of Potter Gray students, 42.99% of McNeill students, 22.90% of BGJrHS students, and 29.54% of BGHS students were Warren County nonresident students.⁷⁷

Warren County's enrollment is consistently increasing. Warren County's enrollment and growth percentages, calculated from information contained in Warren County's School Report Cards, are listed below.⁷⁸

<u>School Year</u>	<u>Total Enrollment</u>	<u>Growth</u>
2012-2013	13,803	296 (2.19%)
2011-2012	13,507	99 (0.74%)
2010-2011	13,408	287 (2.19%)
2009-2010	13,121	374 (2.93%)
2008-2009	12,747	172 (1.37%)
2007-2008	12,575	481 (3.98%)
2006-2007	12,094	"over 300 students" ⁷⁹

Warren County's enrollment and growth from the year 2012-2013 to 2013-2014, calculated from information provided by Warren County in response to Bowling Green Independent's Open Records Request, are listed below.⁸⁰

⁷⁵ *Id.* See, also Joint Exhibit 1 (JE 17, bates no. 1862).

⁷⁶ See, Joint Exhibit 17.

⁷⁷ *Id.*, see also, Joint Exhibit 1 (JE 17, bates no. 1862).

⁷⁸ See, Bowling Green Independent Exhibit 26.

⁷⁹ Warren County's 2006-2007 School Report Card reports a growth of "over 300 students" without reporting an exact number.

⁸⁰ See, Bowling Green Independent Exhibit 26.

<u>School Year</u>	<u>Total Enrollment</u>	<u>Growth</u>
2013-2014	14,629	206 (1.43%)
2012-2013	14,423	---

The consistent increase in Warren County growth prevents harm to Warren County if the 55 additional students are allowed to attend Bowling Green Independent. Additionally, if the 181 CDE students are added to the 775 Warren County nonresidents, there are a total of 956 Warren County residents attending Bowling Green Independent in the current school year. Inclusion of CDE students in the nonresident student number is not required by KRS 157.350, but assuming the numbers are combined for purposes of demonstrating the impact these students have on Warren County's financial position, it is 11 less than attended Bowling Green Independent last year. While Bowling Green Independent did not receive SEEK funding on 100 of the 967 students in 2012-2013, Warren County did not receive these funds either. Therefore, if the number of Warren County nonresidents permitted to attend Bowling Green Independent is kept constant at 750, Warren County will "lose" no more SEEK funding than it did last year and will actually be better off. If Bowling Green Independent is granted a growth factor of 11 students, as it requests in its appeal ($750 \times 1.43\%$) and 761 Warren County residents are permitted to attend Bowling Green Independent next year, Warren County will still be in a better financial position with regards to its residents attending Bowling Green Independent as it was in both 2012-2013 and 2013-2014 assuming the number of CDE students remains constant.⁸¹ Therefore, there is no compelling reason to add to Warren County's growth by reducing the number of nonresident students permitted to attend Bowling Green Independent in 2014-2015.

⁸¹ Adding 181 CDE students to the 761 requested nonresident students results in 942 Warren County residents attending Bowling Green Independent. This is 14 less than the 2013-2014 school year and 25 less than the 2012-2013 school year.

During the nonresident student appeal hearing and Stewart's testimony, Warren County tried to prove that Bowling Green Independent had the highest number of nonresident students of any district in the state.⁸² However, using the numbers provided by the Kentucky Department of Education ("KDE") produced in Joint Exhibit 56, based on percentage of nonresident students compared to total enrollment, Bowling Green Independent is ranked 23rd in the state. Below is a chart breaking down each district ranked higher than Bowling Green Independent based on the KDE analysis, excluding Breathitt and Barren Counties and Corbin Independent.⁸³

Resident District	Rank	Enrolled Students	Resident students	Non-resident students	% Nonresident
Pineville Independent	1	552	214	338	61.23%
Jackson Independent	2	395	168	227	57.47%
Barbourville Independent	3	693	342	351	50.65%
Paintsville Independent	4	810	448	362	44.69%
Raceland-Worthington Independent	5	1109	669	440	39.68%
Harlan Independent	6	847	523	324	38.25%
Fairview Independent	7	898	567	331	36.86%
Murray Independent	8	1634	1034	600	36.72%
Science Hill Independent	9	518	339	179	34.56%
Pikeville Independent	10	1233	816	417	33.82%
Williamsburg Independent	11	865	586	279	32.25%
Williamstown Independent	12	1000	685	315	31.50%
Berea Independent	13	1169	827	342	29.26%
Glasgow Independent	14	2179	1570	609	27.95%
Bardstown Independent	15	2812	2035	777	27.63%
Dawson Springs Independent	16	675	496	179	26.52%
Bell County	17	3040	2264	776	25.53%
Eminence Independent	18	739	553	186	25.17%
Jenkins Independent	19	557	428	129	23.16%
Paris Independent	20	736	578	158	21.47%
Bourbon County	21	2958	2378	580	19.61%
Hazard Independent	22	988	795	193	19.53%
Bowling Green Independent	23	4080	3289	791	19.39%

⁸² See, testimony of Stewart and Warren County Exhibits 2-5 and Joint Exhibit 56.

⁸³ These districts were not included in the calculation because of errors in the KDE data explained by Pat Stewart during the hearing.

When looking at nonresident student population based on percent of total enrollment, there are 22 districts in Kentucky that have a higher percentage of nonresident student enrollment than Bowling Green Independent. Further diminishing the impact of these students on Warren County as compared to other districts in the state is the fact that Warren County is the 6th largest school district in Kentucky.⁸⁴ The impact of approximately 750 students on a district of Warren County's size is much less than the impact of a smaller number of students on a district with significantly lower enrollment than Warren County, as is the case between Knox County and Corbin Independent.⁸⁵

2. Minority Students

If Warren County resident students are prevented from attending Bowling Green Independent because fewer students are allowed under the nonresident agreement, Bowling Green Independent's demographics will be disproportionately negatively affected. The following examples provide an illustration of the impact removing Warren County resident students will have on Bowling Green Independent. Below is a spreadsheet outlining the number and percentage of minority students attending Bowling Green Independent and Warren County for 2013-2014. For a spreadsheet breaking down the number and percentage of Bowling Green Independent students classified as minorities, and separating out the number and percentages of Bowling Green Independent residents and Warren County residents classified as minorities, for the years 2004-2005 through 2012-2013, see Joint Exhibit 1 at JE 26, bates no. 1885.

⁸⁴ See, testimony of Young.

⁸⁵ See, testimony of Tinius.

Students Classified as Minority			
	Number of Minority Students ⁸⁶	Percentage of Minority Students	Enrollment
Warren County	3,725	25.46%	14,629
Bowling Green Independent	1,616	41.09%	3,933
Warren County Residents Attending Bowling Green Independent	137	17.93%	764

If all Warren County residents attending Bowling Green Independent are removed from Bowling Green Independent and enrolled in Warren County, the minority numbers and percentages at both schools would be as follows:

Impact if All Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of Minority Students	Percentage of Minority Students	Enrollment
Warren County	3,862	25.09%	15,393
Bowling Green Independent	1,479	46.67%	3,169

As the above comparison demonstrates, removing Warren County residents from Bowling Green Independent and enrolling them into Warren County has almost no impact on Warren County's demographics (0.37% decrease in minority students) while drastically changing the demographics of Bowling Green Independent (5.58% increase in minority students). This change leaves Bowling Green Independent with a student population consisting almost of one-half minorities, while Warren County's student population would consist of only approximately one-fourth minorities. While Bowling Green Independent recognizes that the entire population of Warren County resident students will not be removed from Bowling Green Independent all in one year, the impact of removing even a portion of Warren County residents from Bowling Green Independent will disproportionately negatively impact Bowling Green

⁸⁶ This number for Warren County and Bowling Green Independent was retrieved from data provided by both districts in response to Open Records Requests. The number and percentage of Warren County Residents attending Bowling Green Independent was retrieved from Joint Exhibit 32.

Independent. For a school-by-school breakdown of the impact of removing all Warren County residents from Bowling Green Independent, see Bowling Green Independent Exhibit 9.

Considering only the potential reduction of 55 students for the 2014-2015 school year, the change in minority composition is reflected in the chart below. If the actual minority percentage of Warren County residents attending Bowling Green Independent in 2013-2014 (17.93%) is applied to 55, presumably 9.9 of the 55 students would be classified as a minority. The following comparison is based on this calculation.

Impact if 55 Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of Minority Students	Percentage of Minority Students	Enrollment
Warren County	3,734.9	25.44%	14,684
Bowling Green Independent	1,606.1	41.42%	3,878

While the percentage of minority students at Warren County will decrease by only 0.02%, the percentage of minority students at Bowling Green Independent will increase by 0.33%. Even though the impact on both districts is minimal, Bowling Green Independent is still disproportionately negatively affected by the removal of 55 Warren County resident students. The percentage of minority students at Bowling Green Independent increased 16.5 times the amount the percentage decreased at Warren County. The most important point to consider in this context is that Warren County's current minority population is low, with Bowling Green Independent's being over 15% greater. Taking any number of Warren County residents out of Bowling Green Independent will only serve to widen this gap.

Dr. Roslyn Mickelson ("Dr. Mickelson"), a professor of Sociology, Public Policy, Gender and Women's Studies, and Information Technology at the University of North Carolina-Charlotte, testified regarding the negative impact that will be felt by both districts if Warren

County is permitted to progressively decrease the number of nonresident students permitted to attend Bowling Green Independent. A diverse school reflects the socioeconomic, racial and ethnic mix of the community in which the school is located.⁸⁷ If Warren County is permitted to continually reduce the number of its residents it permits to attend Bowling Green Independent, the district's student population will no longer reflect the socioeconomic, racial and ethnic mix of the Bowling Green/Warren County community.

Dr. Mickelson presented evidence regarding the importance of diversity in schools. She testified that diverse schools foster greater achievement and relate to positive academic and nonacademic outcomes both during school and as students enter adulthood.⁸⁸ While these benefits accrue to children from all racial, ethnic and socioeconomic backgrounds, children from economically disadvantaged and minority backgrounds are positively impacted most, especially at the secondary school level.⁸⁹

Dr. Mickelson testified that ending the historical arrangement between the districts and substantially reducing the number of Warren County students permitted to attend Bowling Green Independent would reduce diversity in both districts over time.⁹⁰ Over time Warren County would become more Caucasian and middle class while Bowling Green Independent would become less privileged, with a higher proportion of children qualified for free and reduced lunch and a higher concentration of minorities.⁹¹

In addition to the direct impact on students attending both districts, the decrease in diversity over time will have an effect on teaching staffs in both districts. Once a school system becomes more racially isolated and has concentrations of low income children, it becomes a less

⁸⁷ See, testimony of Dr. Mickelson.

⁸⁸ See, testimony of Dr. Mickelson.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

desirable place to teach for many of the more qualified educators due to the unstable nature of this population.⁹² As this change occurs, the more highly qualified teachers will seek employment where there is a more stable student population.⁹³ As a consequence, high poverty districts end up with less qualified teachers.⁹⁴

As Bowling Green Independent becomes less diverse and the minority and low socioeconomic status population increases, parents who are choosing where to live will begin making their decisions based more on the school system than other factors.⁹⁵ This will begin a vicious cycle that perpetuates the momentum towards developing a school system that has concentrated poverty and racial isolation.⁹⁶ Not only does this cycle impact the school system, but it tends to be a downward cycle in the quality of life for the people who remain in the community.⁹⁷

Dr. Mickelson indicated that this transformation is not likely to occur over one or two years.⁹⁸ However, she likened each year to pulling a thread from a piece of fabric. If each year more threads are pulled, eventually the fabric unravels.⁹⁹ Her testimony demonstrates the long-term impact on both the school systems and the community that will occur if Warren County is permitted to reduce the number of nonresident students allowed to attend Bowling Green Independent over time. Her conclusion was that it makes no sense to end the historical arrangement that has existed between the two districts before the dispute that began in 2013.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

3. Limited English Proficiency

Below is a spreadsheet outlining the number and percentage of students classified as Limited English Proficiency ("LEP") attending Bowling Green Independent and Warren County for 2013-2014. For Bowling Green Independent's LEP data from 2004-2005 to 2012-2013, see Joint Exhibit 1 at JE 27 (bates no. 1888). For Warren County's LEP data from 2006-2007 to 2012-2013, see Joint Exhibit 1 at JEs 28 and 43(7) (bates nos. 1890 and 2288).

Students Classified as LEP			
	Number of LEP Students ¹⁰⁰	Percentage of LEP Students	Enrollment
Warren County	1,371	9.37%	14,629
Bowling Green Independent	414	10.53%	3,933
Warren County Residents Attending Bowling Green Independent	18	2.36%	764

The percentage of LEP students attending Warren County, and the percentage of Warren County resident LEP students attending Bowling Green Independent, are both lower than the percentage of LEP students attending Bowling Green Independent. If Warren County students are removed from Bowling Green Independent and enrolled in Warren County, the result will be to widen the gap between the two districts to Bowling Green Independent's detriment.

Warren County Superintendent Rob Clayton ("Clayton") argued that Warren County is experiencing some sort of financial detriment because LEP students cost more to educate than "typical" students.¹⁰¹ While this may be true, Bowling Green Independent faces those same financial challenges associated with LEP students, and Bowling Green Independent's current LEP percentage is actually higher than Warren County's. Therefore, Bowling Green

¹⁰⁰ See, Joint Exhibits 33 and 34.

¹⁰¹ See, testimony of Clayton.

Independent actually incurs a higher percentage of additional cost in educating LEP students than Warren County.

Clayton also argued that Bowling Green Independent does not accept Warren County students who cost more to educate, including LEP students. However, Bowling Green Independent currently has 18 Warren County residents classified as LEP enrolled in its district.¹⁰² Even though the percentage of these students is less than the percentage of LEP students within Warren County, Bowling Green Independent can only consider students for enrollment who apply.¹⁰³ If a lower percentage of LEP students apply to Bowling Green Independent than is representative of Warren County's population, it is out of Bowling Green Independent's control. Bowling Green Independent does not consider a student's classification as LEP in making its decisions regarding which students will be admitted in the upcoming year.¹⁰⁴ Bowling Green Independent follows its priority system, which does not give any weight to whether a student is classified as LEP.¹⁰⁵

If all Warren County students enrolled in Bowling Green Independent are removed from Bowling Green Independent and enrolled in Warren County, each district's LEP percentages will be as follows:

Students Classified as LEP if All Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of LEP Students	Percentage of LEP Students	Enrollment
Warren County	1,389	9.02%	15,393
Bowling Green Independent	396	12.50%	3,169

¹⁰² See, Joint Exhibit 33.

¹⁰³ See, testimony of Tinius.

¹⁰⁴ See, Joint Exhibit 16 and testimony of Lawson and Tinius.

¹⁰⁵ *Id.*

Removing all Warren County students enrolled in Bowling Green Independent and enrolling them in Warren County will decrease the percentage of students classified as LEP attending Warren County by only 0.35%, while increasing the percentage of students classified as LEP attending Bowling Green Independent by 1.97%. The increase in Bowling Green Independent's percentage of LEP students is more than 5 times the decrease in LEP students attending Warren County. This statistic further demonstrates the disparate impact on Bowling Green Independent of reducing the number of Warren County resident students permitted to attend Bowling Green Independent under the nonresident agreement between the two districts. For an analysis of the impact on each individual school of the removal of all Warren County residents, see Bowling Green Independent Exhibit 11.

The following example provides an illustration of the impact of removing only the 55 students at issue this year will have on Bowling Green Independent. Based on the above-referenced actual data for the 2013-2014 school year, if the percentage of Warren County students attending Bowling Green Independent classified as LEP (2.36%) is applied to 55, 1.3 of the 55 students is presumably classified as LEP. This calculation was used to determine the impact on Bowling Green Independent and Warren County of removing only 55 students, which is outlined in the chart below.

Students Classified as LEP if 55 Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of LEP Students	Percentage of LEP Students	Enrollment
Warren County	1,372.3	9.35%	14,684
Bowling Green Independent	412.7	10.64%	3,878

If the reduction in Warren County residents permitted to attend Bowling Green Independent in 2014-2015 is a one-time reduction, Warren County's percentage of students

classified as LEP will only decrease 0.02%, while Bowling Green Independent's percentage of students classified as LEP will increase by 0.11%. Even though this change is not as dramatic as removing all Warren County residents attending Bowling Green Independent, it further demonstrates the disproportionately negative impact removing any Warren County resident students will have on Bowling Green Independent's student demographics.

4. Free and Reduced Lunch

For a chart detailing the number and percentages of Warren County and Bowling Green Independent students attending Bowling Green Independent eligible for free and reduced lunch for years 2012-2013 and 2013-2014, see Joint Exhibit 25. See Joint Exhibit 26 for charts detailing the number and percentages of students attending Warren County eligible for free and reduced lunch for the 2012-2013 and 2013-2014 school years.

While a nonresident agreement decreasing the number of Warren County students eligible to attend Bowling Green Independent will slightly reduce the free and reduced lunch percentage at Warren County, such an agreement will disproportionately increase the percentage of total students attending Bowling Green Independent eligible for free or reduced lunch.

The data in the following chart demonstrates the free and reduced lunch percentages at Warren County and Bowling Green Independent as a whole, and for Warren County residents attending Bowling Green Independent for the 2013-2014 school year.

Students Eligible for Free and Reduced Lunch			
	Number of Students Eligible for Free and Reduced Lunch ¹⁰⁶	% of Students Eligible for Free and Reduced Lunch	Enrollment
Warren County	8,234	56.29%	14,629
Bowling Green Independent	2,140	54.41%	3,933
Warren County Residents Attending Bowling Green Independent	100	13.09%	764

If all Warren County resident students attending Bowling Green Independent are removed from Bowling Green Independent and enrolled in Warren County, the free and reduced lunch statistics for both districts will be as follows:

Students Eligible for Free and Reduced Lunch with all Warren County Resident Students Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of Students Eligible for Free and Reduced Lunch	% of Students Eligible for Free and Reduced Lunch	Enrollment
Warren County	8,334	54.14%	15,393
Bowling Green Independent	2,040	64.37%	3,169

If all Warren County residents are removed from Bowling Green Independent and enrolled in Warren County, the percentage of students attending Bowling Green Independent eligible for free and reduced lunch will increase 9.96%, while the percentage of students attending Warren County eligible for free and reduced lunch will decrease only 2.15%. The removal of Warren County residents from Bowling Green Independent greatly increases the percentage of free and reduced lunch eligible students at Bowling Green Independent while providing only a marginal decrease in that percentage for Warren County. For a chart detailing

¹⁰⁶ The numbers in this table were retrieved from information exchanged by the districts in response to Open Records Requests contained in Joint Exhibits, 17, 25 and 26.

the impact on each Bowling Green Independent school, see Bowling Green Independent Exhibit 8.

The following example provides an illustration of the impact of removing only the 55 students at issue this year will have on Bowling Green Independent. Based on the above-referenced actual data for the 2013-2014 school year, if the average percentage of Warren County students attending Bowling Green Independent eligible for free and reduced lunch (13.09%) is applied to the 55 students, 7.2 of those students would be eligible for free and reduced lunch. The information presented in the chart below is based on this calculation.

Students Eligible for Free and Reduced Lunch with 55 Warren County Resident Students Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of Students Eligible for Free and Reduced Lunch	% of Students Eligible for Free and Reduced Lunch	Enrollment
Warren County	8,241.2	56.12%	14,684
Bowling Green Independent	2,132.8	55.00%	3,878

If these 55 representative students are removed from Bowling Green Independent and enrolled in Warren County, the percentage of students attending Bowling Green Independent eligible for free and reduced lunch will increase 0.59%, while the percentage of students attending Warren County eligible for free and reduced lunch will decrease only 0.17%. Even though the impact on both districts is less severe assuming a one-time-only decrease in the number of students allowed under the nonresident contract, the effect on Bowling Green Independent is much greater than the effect on Warren County.

5. Special Education

Below is a chart outlining the number and percentage of students classified as special education attending Bowling Green Independent and Warren County for 2013-2014. For

Bowling Green Independent's special education data from 2004-2005 to 2012-2013, see Joint Exhibit 1 at JE 25 (bates no. 1882).

Students Classified as Special Education			
	Number of Special Ed Students ¹⁰⁷	Percentage of Special Ed Students	Enrollment
Warren County	1,878	12.83%	14,629
Bowling Green Independent	421	10.70%	3,933
Warren County Residents Attending Bowling Green Independent	41	5.37%	764

Clayton argued that Warren County is experiencing some sort of financial detriment because some special education students cost more to educate than "typical" students.¹⁰⁸ While it is true that these students can sometimes be more expensive to educate, Bowling Green Independent faces those same financial challenges associated with certain special education students.

Clayton also argued that Bowling Green Independent does not accept Warren County students that cost more to educate, including special education students.¹⁰⁹ However, Bowling Green Independent currently has 41 Warren County residents classified as special education enrolled in its district.¹¹⁰ Even though the percentage of these students is less than the percentage of special education students within Warren County, Bowling Green Independent can only consider students for enrollment that apply. Bowling Green Independent does not consider a student's participation in special education programs in making its decisions regarding which students will be admitted in the upcoming year.¹¹¹ In fact, it would be illegal to do so.¹¹²

¹⁰⁷ See, Joint Exhibits 29 and 30.

¹⁰⁸ See, testimony of Clayton.

¹⁰⁹ *Id.*

¹¹⁰ See, Joint Exhibit 29.

¹¹¹ See, Joint Exhibit 16 and testimony of Tinius.

Bowling Green Independent follows its priority system, which does not give any weight to whether a student is classified as special education.¹¹³ Furthermore, Cummings testified that he enrolled one of his children at Potter Gray specifically to take advantage of what he perceived a better program to service his autistic son.¹¹⁴ If parents are specifically seeking out the services at Bowling Green Independent for children with special needs, and the students are being admitted, no valid argument can be made that Bowling Green Independent somehow excludes these students.

If all Warren County students enrolled in Bowling Green Independent are removed from Bowling Green Independent and enrolled in Warren County, each district's special education percentages will be as follows:

Students Classified as Special Education if All Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of Special Ed Students	Percentage of Special Ed Students	Enrollment
Warren County	1,919	12.47%	15,393
Bowling Green Independent	380	11.99%	3,169

Removing all Warren County students enrolled in Bowling Green Independent and enrolling them in Warren County will decrease the percentage of students classified as special education attending Warren County by only 0.36%, while increasing the percentage of students classified as special education attending Bowling Green Independent by 1.29%. This statistic further demonstrates the disparate impact on Bowling Green Independent of reducing the number of Warren County resident students permitted to attend Bowling Green Independent under the nonresident agreement between the two districts. For an analysis of the impact on each

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *See, testimony of Cummings.*

individual school of the removal of all Warren County residents, see Bowling Green Independent Exhibit 10.

The following example provides an illustration of the impact of removing only the 55 students at issue this year will have on Bowling Green Independent. Based on the above-referenced actual data for the 2013-2014 school year, if the percentage of Warren County students attending Bowling Green Independent classified as special education (5.37%) is applied to 55, 3 of the 55 students is presumably classified as special education. This calculation was used to determine the impact on Bowling Green Independent and Warren County of removing only 55 students, which is outlined in the chart below.

Students Classified as Special Education if 55 Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of Special Ed Students	Percentage of Special Ed Students	Enrollment
Warren County	1,881	12.81%	14,684
Bowling Green Independent	418	10.78%	3,878

If the reduction in Warren County residents permitted to attend Bowling Green Independent in 2014-2015 is a one-time reduction, Warren County's percentage of special education students will only decrease 0.02%, while Bowling Green Independent's percentage of special education students will increase by 0.08%. Even though this change is not as dramatic as removing all Warren County residents attending Bowling Green Independent, it further demonstrates the disproportionately negative impact removing any Warren County resident students will have on Bowling Green Independent's student demographics.

B. District Achievement

1. Gifted and Talented

Below is a chart outlining the number and percentage of gifted and talented students attending Bowling Green Independent and Warren County for 2013-2014. For a chart breaking down the number and percentage of Bowling Green Independent students classified as gifted and talented, and separating out the number and percentages of Bowling Green Independent residents and Warren County residents classified as gifted and talented, for the years 2004-2005 through 2012-2013, see Joint Exhibit 1 at JE 24, (bates no. 1879).

Students Classified as Gifted and Talented			
	Number of GT Students¹¹⁵	Percentage of GT Students	Enrollment
Warren County	2,492	17.03%	14,629
Bowling Green Independent	794	20.19%	3,933
Warren County Residents Attending Bowling Green Independent	277	36.26%	764

If all Warren County residents attending Bowling Green Independent are removed from Bowling Green Independent and enrolled in Warren County, the gifted and talented numbers and percentages at both schools would be as follows:

Impact if All Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of GT Students	Percentage of GT Students	Enrollment
Warren County	2,769	17.99%	15,393
Bowling Green Independent	517	16.31%	3,169

As the above comparison demonstrates, removing Warren County residents from Bowling Green Independent and enrolling them in Warren County has almost no impact on

¹¹⁵ This number for Warren County and Bowling Green Independent was retrieved from data provided by both districts in response to Open Records Requests and produced as Joint Exhibits 27 and 28.

Warren County's gifted and talented population (less than 1% increase) while drastically changing the makeup of Bowling Green Independent (almost 4% decrease). For a school-by-school breakdown of the impact of removing all Warren County residents from Bowling Green Independent, see Bowling Green Independent Exhibit 12.

Looking only at the potential reduction of 55 students for the 2014-2015 school year, the change in gifted and talented numbers is reflected in the chart below. If the actual gifted and talented percentage of Warren County residents attending Bowling Green Independent in 2013-2014 (36.26%) is applied to 55, presumably 19.9 of the 55 students would be classified as a gifted and talented. The following comparison is based on this calculation.

Impact if 55 Warren County Residents Are Removed from Bowling Green Independent and Enrolled in Warren County			
	Number of GT Students	Percentage of GT Students	Enrollment
Warren County	2,511.9	17.11%	14,684
Bowling Green Independent	774.1	19.96%	3,878

While the percentage of gifted and talented students at Warren County will increase by only 0.08%, the percentage of gifted and talented students at Bowling Green Independent will decrease by 0.23%. Even though the impact on both districts is minimal, Bowling Green Independent is still disproportionately negatively affected by the removal of 55 Warren County resident students.

2. District Achievement

Relevant data for Warren County and Bowling Green Independent from their School Report Cards is presented below. This information is contained in Bowling Green Independent Exhibit 35. Because evaluation standards have changed over the years, the data presented for each school year is not identical.

2012-2013		
	<u>Warren County</u>	<u>Bowling Green Independent</u>
Accountability Overall Score:	58.4	60.0
Percentile Rank:	71	82
Classification:	Proficient	Proficient/Progressing
Graduation Rate:	90.8%	94.6%
2011-2012		
	<u>Warren County</u>	<u>Bowling Green Independent</u>
Accountability Overall Score:	58.1	59.2
Percentile Rank:	68	78
Classification:	Needs Improvement	Proficient
Graduation Rate:	86.1%	79.3%
2010-2011		
	<u>Warren County</u>	<u>Bowling Green Independent</u>
% Proficient & Distinguished in Reading:	73.67%	73.77%
% Proficient & Distinguished in Math:	67.35%	67.76%
% Proficient and Distinguished (Elem & Middle School)	62.49%	65.92%
Graduation Rate:	86.38%	72.9%
2009-2010		
	<u>Warren County</u>	<u>Bowling Green Independent</u>
% Proficient & Distinguished in Reading:	73.82%	72.65%
% Proficient & Distinguished in Math:	65.64%	66.72%
% Proficient and Distinguished (Elementary & Middle School)	60.18%	63.78%
Graduation Rate:	88.57%	94.33%

2008-2009		
	<u>Warren County</u>	<u>Bowling Green Independent</u>
% Proficient & Distinguished in Reading:	74.63%	73.68%
% Proficient & Distinguished in Math:	66.55%	66.72%
% Proficient & Distinguished in Science:	58.61%	63.06%
2007-2008		
	<u>Warren County</u>	<u>Bowling Green Independent</u>
Academic Index in Reading:	96.77	97.29
Academic Index in Math:	88.18	93.36
Academic Index in Science:	88.66	95.95
2006-2007		
	<u>Warren County</u>	<u>Bowling Green Independent</u>
Academic Index in Reading:	98.52	99.74
Academic Index in Math:	86.87	88.22

Based on this information, it can hardly be said that one district is so superior to the other that continuing the nonresident agreements of the past presents a disadvantage to Warren County. This summary presents a picture of two high performing school districts.¹¹⁶ The number of Warren County residents attending Bowling Green Independent is not causing a detrimental impact on Warren County's achievement. In fact, in recent years, Warren County and Bowling Green Independent have become even closer in achievement based on standardized testing results. However, the removal of these students will cause a detrimental impact on Bowling Green Independent.

Parental involvement is also a strong component of student and district achievement, as research has shown that the more a parent is involved with a child's education, the more likely a

¹¹⁶ See, testimony of Tinius.

child is to achieve at a higher level.¹¹⁷ Giving parents the opportunity to choose that their child enroll in a school that allows them to have the highest level of involvement is likely to help that child achieve more than if the parent is dissatisfied with where they have had to enroll the child.¹¹⁸

3. Standardized Testing

The standardized testing scores from Bowling Green Independent and Warren County for 2012-2013 are set forth in Joint Exhibits 35 and 36. District-wide standardized testing results can be found in both districts' School Report Cards located in Joint Exhibits 13 and 14. Bowling Green Independent's data is also broken down into Warren County residents, Bowling Green Independent residents, and total students attending Bowling Green Independent. Below is an analysis regarding the impact of removing Warren County residents from Bowling Green Independent on selected standardized test scores. District-wide standardized test scores were taken from each district's School Report Card because data produced in Joint Exhibit 36 is broken down by school, not by district. Data for Warren County residents attending Bowling Green Independent was taken from Joint Exhibit 35. All tests administered have not been analyzed, but the results would be similar in that Bowling Green Independent will be disproportionately negatively impacted.

If the ACT scores for Warren County resident students attending Bowling Green Independent are removed from Bowling Green Independent and added to Warren County, the results will be as follows:

¹¹⁷ See, Joint Exhibit 1, (testimony of Tinius at bates no. 686).

¹¹⁸ *Id.*

2012-2013 ACT Scores						
	2012-2013 Actual Scores		Impact of Removing All Warren County Residents		Impact of Removing 55 Warren County Residents	
	Score	# tested	Score	# tested	Score	# tested
Warren County	20.1	975	20.4	1,087	20.1	983
Bowling Green Independent	20.6	280	19.3	168	20.5	272
WC Residents @ Bowling Green Independent	22.6	112	-----		-----	

As the above comparisons show, removing Warren County students from Bowling Green Independent and returning them to Warren County reduces Bowling Green Independent's ACT scores without providing a corresponding benefit to Warren County's scores. Assuming that the reduction of 55 students is a one-time reduction, there will be no impact on Warren County's ACT scores while Bowling Green Independent's scores will slightly decrease. Because it is impossible to accurately determine how many Warren County students will be removed from each grade level, the calculations used to remove 55 students were made based on the following logic: 112 students represent approximately 14.66% of the Warren County residents attending Bowling Green Independent in 2012-2013; assuming the same proportion will be represented within the 55 students, approximately 8 of the 55 students would have taken the ACT; these students were removed from Bowling Green Independent and added to Warren County using the average scores set forth in the chart above.

If the PLAN scores for Warren County resident students attending Bowling Green Independent are removed from Bowling Green Independent and added to Warren County, the results will be as follows:

2012-2013 PLAN Scores – English						
	2012-2013 Actual Scores		Impact of Removing All Warren County Residents		Impact of Removing 55 Warren County Residents	
	Score	# tested	Score	# tested	Score	# tested
Warren County	17.0	1,066	17.2	1,171	17.0	1,074
Bowling Green Independent	18.1	300	17.2	195	18.1	292
WC Residents @ Bowling Green Independent	19.73	105	-----		-----	

2012-2013 PLAN Scores – Math						
	2012-2013 Actual Scores		Impact of Removing All Warren County Residents		Impact of Removing 55 Warren County Residents	
	Score	# tested	Score	# tested	Score	# tested
Warren County	17.3	1,066	17.6	1,171	17.3	1,074
Bowling Green Independent	18.2	300	17.1	195	18.1	292
WC Residents @ Bowling Green Independent	20.21	105	-----		-----	

2012-2013 PLAN Scores – Reading						
	2012-2013 Actual Scores		Impact of Removing All Warren County Residents		Impact of Removing 55 Warren County Residents	
	Score	# tested	Score	# tested	Score	# tested
Warren County	17.3	1,066	17.5	1,171	17.3	1,074
Bowling Green Independent	18.0	300	17.0	195	17.9	292
WC Residents @ Bowling Green Independent	19.85	105	-----		-----	

2012-2013 PLAN Scores – Science						
	2012-2013 Actual Scores		Impact of Removing All Warren County Residents		Impact of Removing 55 Warren County Residents	
	Score	# tested	Score	# tested	Score	# tested
Warren County	18.4	1,066	18.6	1,171	18.4	1,074
Bowling Green Independent	19.2	300	18.4	195	19.2	292
WC Residents @ Bowling Green Independent	20.60	105	-----		-----	

When all Warren County residents are removed from Bowling Green Independent, Warren County's PLAN scores in each subject increase between only 0.2 to 0.3 points while Bowling Green Independent's PLAN scores in each subject decrease between 0.8 to 1.1 points. The negative impact on Bowling Green Independent of not educating these students is almost 4 times any benefit Warren County receives from educating the same students. The 105 students taking the PLAN test represented 13.74% of the Warren County nonresident students attending Bowling Green Independent. When this percentage is applied to the 55 students that are at issue next year, approximately 8 of those 55 would have taken the PLAN test. To analyze the impact of the loss of 55 nonresident students, 8 students and their scores were moved from Bowling Green Independent to Warren County. This change had no impact on Warren County's PLAN scores in any subject, but marginally decreased Bowling Green Independent's PLAN scores in Reading and Math.

The impacts discussed above for selected tests will be similar for each standardized test administered. The negative impact on Bowling Green Independent will be much greater than any minimal positive impact on Warren County.

4. Grade Point Average

The average grade point averages for BGHS as a whole, Bowling Green Independent residents attending BGHS, and Warren County residents attending BGHS for the 2008-2009 through 2012-2013 school years are set forth in Joint Exhibit 1 at JE 34 (bates no. 1905). This information has not changed since the 2013 hearing, as grade point averages are not calculated until the end of the school year.

This data proves that Warren County residents attending Bowling Green Independent are consistently higher performing than Bowling Green Independent residents. If Warren County students are removed from Bowling Green Independent schools, the average GPA of all BGHS students will significantly decrease. However, the average GPA of all students attending Warren County high schools will not see a corresponding increase for the same reasons discussed *supra*.

5. Programming

The Advanced Placement ("AP") courses offered at BGHS and all Warren County high schools for the 2013-2014 and 2014-2015 school years are listed in Joint Exhibits 41 and 42. Bowling Green Independent offered 19 AP classes in 2013-2014 and plans to offer 22 AP classes during the 2014-2015 school year. No Warren County high school offered more than 15 AP classes in the 2013-2014 school year or plans to offer more than 13 AP classes during the 2014-2015 school year. Below are tables outlining the AP classes offered at BGHS and each Warren County high school for the years 2013-2014 and 2014-2015.

Advanced Placement Courses 2013-2014					
Course	BGHS	Greenwood	South Warren	Warren Central	Warren East
Music Theory	•		•		
English Language	•	•	•	•	•
English Literature	•	•	•	•	•
Calculus AB	•	•	•	•	•
Calculus BC	•		•	•	•
Statistics	•	•	•	•	
Chemistry	•	•	•	•	
Biology	•		•	•	
Physics B	•			¹¹⁹	¹²⁰
Physics C			•		
European History	•		•		•
World History	•	•			
US History	•	•	•	•	
Government and Politics – US	•				
Comparative Government and Politics	•				
Psychology	•	•	•		
Human Geography	•		•		
Art/Art Studio	•			•	
Computer Science A	•		•	•	
Spanish Language	•				
Environmental Science					•
Macroeconomics		•	•		

¹¹⁹ Warren County did not indicate which AP Physics course was offered at Warren Central.

¹²⁰ Warren County did not indicate which AP Physics course was offered at Warren East.

Advanced Placement Courses 2014-2015					
Course	BGHS	Greenwood	South Warren	Warren Central	Warren East
Music Theory	•		•		
English Language	•	•	•	•	•
English Literature	•	•	•	•	•
Calculus AB	•	•	•	•	•
Calculus BC	•		•	•	•
Statistics	•		•	•	
Chemistry	•	•	•	•	•
Biology	•	•	•	•	•
Physics B	•	¹²¹		¹²²	¹²³
Physics I	•				
Physics C			•		
Environmental Science	•				•
European History	•	•	•		•
World History	•	•			
US History	•	•	•	•	
Government and Politics – US	•			•	
Comparative Government and Politics	•				
Government and Civics		•			
Psychology	•	•	•		
Human Geography	•		•		•
Art Studio				•	
Computer Science A	•			•	
Spanish Language	•	•			
French Language	•				
German Language	•				
Studio in Art 2-D and #-Design				•	

Because Bowling Green Independent offers a greater number of AP courses, students attending Bowling Green Independent have more opportunity to earn college credit through AP courses in a more diverse number of subject areas. Students attending Warren County do not have nearly as many AP opportunities as students attending Bowling Green Independent. Of the 55 students who would have been admitted to Bowling Green Independent had Warren County

¹²¹ Warren County did not indicate which AP Physics course is offered at Greenwood.

¹²² Warren County did not indicate which AP Physics course is offered at Warren Central.

¹²³ Warren County did not indicate which AP Physics course is offered at Warren East.

not reduced the number of its residents for which SEEK funding would be released, 16 students would attend BGHS. These 16 students will now be forced to either attend a school system with fewer AP offerings, or pay tuition to attend BGHS, which provides more opportunity for advanced learning and college credit through AP classes. Additionally, depending on which Warren County school its residents are districted to attend, the reduction in these opportunities may be drastic. For example, Warren East only offered 7 AP classes in 2013-2014 and plans to offer only 10 AP classes in 2014-2015.

In addition to the immediate impact on students that will not be permitted to attend Bowling Green Independent in the upcoming school year, if Warren County is permitted to reduce the number of its residents that are permitted to attend Bowling Green Independent, Bowling Green Independent's AP programming will suffer. As the number of students attending Bowling Green Independent decreases, there will be fewer students to support the vast array of AP courses offered at BGHS.¹²⁴ With fewer students to enroll in these courses, BGHS will be unable to offer as many options, and the students attending BGHS will suffer as a result.¹²⁵

C. Facilities

1. Construction and Facilities

Warren County has grown by between 200-300 students per year in the past two school years.¹²⁶ Warren County's most recent facilities plan calls for the construction of a new 600 student elementary school to relieve overcrowding within the district.¹²⁷ This elementary school will cost over \$13 million.¹²⁸ The need for these new facilities is clear, as Warren County currently has 3 elementary schools with mobile units because of insufficient classrooms in the

¹²⁴ See, testimony of Tinius.

¹²⁵ See, testimony of Tinius.

¹²⁶ See, Bowling Green Independent Exhibit 26.

¹²⁷ See, Joint Exhibit 48.

¹²⁸ *Id.*

buildings.¹²⁹ Because Warren County continues to experience significant growth each year, which amounts to more than 4 times the number of students no longer allowed to attend Bowling Green Independent under Warren County's proposal for 2014-2015, there is no compelling reason that these 55 students should not be allowed to attend Bowling Green Independent.

In addition to the harm that would be caused to Warren County if these students return to a district that is already using mobile units at three of its schools, certain schools at Bowling Green Independent will eventually be significantly under capacity. If the reduction of 55 students is not a one-time reduction, and Warren County continues to reduce the number of students allowed under the nonresident agreement each year as it has indicated it plans to do, Bowling Green Independent could be forced to close or consolidate some of its elementary schools. Tinius testified that if the reductions continue, within just 3 to 5 years, Bowling Green Independent will have to consider whether it needs to close 1 of its 5 elementary schools.

The two elementary schools with the highest number of Warren County students enrolled are Potter Gray and McNeill.¹³⁰ For the 2013-2014 school year, Potter Gray had 441 students, with 140 (31.75%) of those being Warren County residents, and McNeill had 407 students, with 120 (29.48%) of those being Warren County residents.¹³¹ Additionally, for the 2013-2014 school year, BGJrHS had 869 students, with 143 (16.46%) being Warren County residents, and BGHS had 1,202 students, with 328 (27.29%) being Warren County residents.¹³² Of Warren County's nonresident enrollment in Bowling Green Independent for 2013-2014, Potter Gray's Warren County resident enrollment accounts for 18.32%, McNeill's accounts for 15.71%, BGJrHS's accounts for 18.72% and BGHS's accounts for 42.93%.

¹²⁹ See, testimony of Willie McElroy ("McElroy").

¹³⁰ See, Joint Exhibit 17.

¹³¹ *Id.*

¹³² *Id.*

Below is a chart outlining the capacity at each of these schools as of the date of Bowling Green Independent's most recent facilities plan and Tinius' clarification regarding capacity during the 2013 hearing, projected enrollment at each school assuming the reduction of 55 is a one-time reduction, and projected enrollment at each school assuming Warren County will continue to reduce the number of students allowed under the nonresident agreement until that number reaches zero. The projected enrollment numbers are based on Bowling Green Independent's enrollment in the 2013-2014 school year.

School	Capacity as of 2011 Facilities Plan	2013-2014 Enrollment	Projected Enrollment Based on One-Time Reduction ¹³³	% Reduction in Enrollment Based on One-Time Reduction	Projected Enrollment With No Warren County Residents ¹³⁴	% Reduction in Enrollment with No Warren County Residents
Potter Gray	545	441	419	4.99%	301	31.75%
McNeill	425	407	395	2.95%	287	29.48%
BGJrHS	950	869	864	0.58%	726	16.46%
BGHS	1,200	1,202	1,186	1.33%	874	27.29%

While the one-time reduction has little negative impact on the ratio of enrollment to capacity at each school, if Warren County continues to reduce the number of students allowed under the nonresident agreement with Bowling Green Independent, the 4 schools that will be most heavily impacted by the reduction will end up significantly under capacity. Furthermore, if this reduction continues, a study will have to be done before the 2015 facilities plan is completed

¹³³ These calculations were made by examining the first 55 students on the priority listing in Bowling Green Independent's Exhibit 6 and subtracting the number of students requesting to attend each school from each school's total enrollment in 2013-2014.

¹³⁴ These calculations were made by subtracting the number of students in Joint Exhibit 17 that were Warren County residents attending each of these schools from the total enrollment at each of these schools for 2013-2014.

for Bowling Green Independent to determine the viability of Bowling Green Independent's 5 elementary schools.¹³⁵

Unlike Warren County, Bowling Green Independent has no overcrowding issues. The reduction in the number of Warren County residents for which SEEK funding will be released to Bowling Green Independent will cause harm to Bowling Green Independent, Warren County, and the students who wish to attend Bowling Green Independent by forcing them into a district that already sees enough student growth to require it to use mobile units in multiple elementary schools, without providing any corresponding benefit to Warren County, other than the increase in SEEK money, which is actually less than the amount it costs to educate a child.¹³⁶

2. Bonding Potential

Without any reduction in the number of Warren County residents attending Bowling Green Independent, Bowling Green Independent's bonding capacity is over \$10.7 million.¹³⁷ Any reduction in students has an effect on the bonding capacity of Bowling Green Independent because the Average Daily Attendance ("ADA"), which is affected by enrollment, is a key factor in calculating bonding capacity.¹³⁸

Chip Sutherland ("Sutherland"), Bowling Green Independent's fiscal bonding agent and advisor, was provided information from Dr. Susane Leguizamon regarding the expected decline in Bowling Green Independent enrollment if the number of Warren County residents attending Bowling Green Independent continues to be reduced and Warren County permits only currently enrolled students and their siblings to enroll in future years.¹³⁹ This analysis was used to

¹³⁵ See, Joint Exhibit 1 (testimony of Tinius at bates no. 687); see also, testimony of Tinius.

¹³⁶ See, testimony of Dr. Larry Vick.

¹³⁷ See, testimony of Sutherland and Bowling Green Independent Exhibit 3, page 1.

¹³⁸ See, testimony of Sutherland.

¹³⁹ See, Bowling Green Independent Exhibit 5.

determine Bowling Green Independent's expected bonding capacity next year and in the future based on the anticipated reductions in student enrollment.¹⁴⁰

The impact on Bowling Green Independent in the 2014-2015 school year is a reduction in bonding capacity of \$585,000.¹⁴¹ If Warren County continues each year to reduce the number of students allowed under the nonresident agreement by allowing only siblings of current students to enroll each year, the result will be catastrophic to Bowling Green Independent. If this yearly reduction takes place, within 20 years, Bowling Green Independent's bonding capacity will be reduced by almost half to \$5,930,000.¹⁴² For a district such as Bowling Green Independent that needs a significant amount of bonding capacity to renovate and maintain its facilities, such a decline in bonding capacity is significant.¹⁴³ Tinius testified that in the coming years, at least two of Bowling Green Independent's schools will need new roofs.¹⁴⁴ Projects such as these are the kind that will be impacted if such a drastic reduction in bonding capacity occurs.¹⁴⁵

Based on the bonding analysis prepared by Sutherland, it is apparent that a reduction of the number of students permitted to attend Bowling Green Independent under the nonresident agreement will cause a significant detrimental impact on Bowling Green Independent's bonding capacity.

D. Staffing

Warren County's decision to decrease the number of nonresident students covered by the nonresident student contract between Warren County and Bowling Green Independent will negatively impact the number of certified staffing position allocations at Potter Gray, McNeill,

¹⁴⁰ See, Bowling Green Independent Exhibit 3, pages 2 and 3.

¹⁴¹ See, testimony of Sutherland; *see also*, Bowling Green Independent Exhibit 3, page 2.

¹⁴² See, testimony of Sutherland; *see also*, Bowling Green Independent Exhibit 3, page 3.

¹⁴³ See, testimony of Sutherland.

¹⁴⁴ See, testimony of Tinius.

¹⁴⁵ See, testimony of Sutherland.

and BGHS for the 2014-2015 school year. If Bowling Green Independent maintains its current enrollment, including nonresident students, Potter Gray would be allocated 21 certified staffing positions, McNeill would be allocated 19 certified staffing positions, and BGHS would be allocated 55 certified staffing positions for the 2014-2015 school year based on a 3% discretionary increase approved by the Bowling Green Board.¹⁴⁶ If siblings are the only new Warren County nonresident students permitted to enroll in Bowling Green Independent in 2014-2015, Potter Gray will only be allocated 20 certified staffing positions, McNeill will be allocated 18 certified staffing positions, and BGHS will be allocated 54 certified staffing positions.¹⁴⁷ This reduction results in Bowling Green Independent being able to hire 3 less certified teachers than it would otherwise be able to hire if the nonresident student number were not reduced.

As is apparent from the enrollment numbers presented in Joint Exhibit 17, and the reductions made to the 2013-2014 allocations, removing Warren County students from Bowling Green Independent will have a tremendous effect on the staffing levels needed at Potter Gray, McNeill, BGJrHS, and BGHS. If Warren County continues to decrease the number of students allowed under the nonresident contract, the number of certified staffing allocations at Potter Gray, McNeill, BGJrHS, and BGHS will continue to be reduced by an estimated 3 to 5 positions per year.¹⁴⁸

E. Financial Impact

Warren County continues to cite its need for additional revenue as the reason for the reduction of 55 students. However, Warren County is currently in good financial condition. Warren County's \$7.7 million contingency fund increased by \$3.4 million from the 2011-2012

¹⁴⁶ See, testimony of Tinius and Bowling Green Independent Exhibit 28.

¹⁴⁷ See, Bowling Green Independent Exhibit 29.

¹⁴⁸ See, testimony of Tinius.

fiscal year and is well above the state's required minimum of 2%.¹⁴⁹ In the past year, Warren County's net position increased by approximately \$3.5 million and its fund balance increased by over \$5.5 million.¹⁵⁰ This is hardly the picture of a district that is struggling financially.

During last year's nonresident student agreement appeal hearing, Tim Murley, former Warren County Superintendent, testified that prior to his retirement in early 2013, he had planned to place Bowling Green Independent's proposed nonresident student agreement on the Warren County Board's agenda for approval, but it did not get done before he retired.¹⁵¹ Despite Warren County's continued assertion that its decision to reduce the number of its residents it permits to attend Bowling Green Independent is based on financial concerns, the Warren County Superintendent, as recently as last year, did not see any financial issues on the horizon that would justify reducing this number.

Additionally, any benefit the additional SEEK dollars would bring to Warren County would be minimal. **Even with the unreasonable projection that these students will cause Warren County to incur no additional costs, the increase in funding would amount to only 0.12% of Warren County's general fund budget.**¹⁵² When the costs associated with educating these students, as well as the diminished benefit of the tax dollars associated with these students is factored in, this increase in funding and benefit to Warren County is even less.

Warren County spent \$8,533 per student during the 2012-2013 school year according to its School Report Card.¹⁵³ While some students cost more to educate and some cost less, Dr. Larry Vick ("Dr. Vick") testified that this school report card number is the best indicator of the cost to educate a student, and is the only number he would feel comfortable as a superintendent

¹⁴⁹ See, testimony of McElroy.

¹⁵⁰ *Id.*

¹⁵¹ See, Joint Exhibit 1 (testimony of Tim Murley, bates nos. 544-546).

¹⁵² See, testimony of McIntyre.

¹⁵³ See, Binding Stipulation no. 17.

using for planning purposes.¹⁵⁴ Jeff Herron ("Herron"), Bowling Green Independent's Finance Director, also testified that a child cannot be educated on SEEK funds alone. This is why districts collect local taxes.¹⁵⁵ With per student spending at over twice the amount of SEEK funding per student, it can hardly be said that requiring these students to attend Warren County will improve Warren County's financial position. Additionally, Dr. Vick testified that focusing only on the SEEK funds that these students could bring to Warren County is short sighted. Warren County is actually receiving almost \$1 million in local revenue and spending nothing to educate those children attending Bowling Green Independent, thereby enhancing the education of the other students attending the county school system.¹⁵⁶ In his opinion, what makes more sense economically is for Warren County to allow more of its residents to attend Bowling Green Independent so that it is spending even less on education costs while still keeping the same level of local revenue.¹⁵⁷

Herron created several charts analyzing the financial impact that the Warren County resident students attending Bowling Green Independent have on Warren County, and the impact the return of some or all of these students will have on Warren County.¹⁵⁸

Herron conducted a detailed analysis of the impact on Warren County's staffing of returning 55 students to Warren County next year.¹⁵⁹ In conducting this analysis, he reviewed the list of Warren County applicants identified to attend Bowling Green Independent in the 2014-2015 school year, and determined the Warren County schools that the first 55 of these children, ranked by priority, would attend if not permitted to attend Bowling Green Independent.¹⁶⁰ He

¹⁵⁴ See, testimony of Dr. Vick.

¹⁵⁵ See, testimony of Herron.

¹⁵⁶ See, testimony of Dr. Vick.

¹⁵⁷ *Id.*

¹⁵⁸ See, testimony of Herron and Bowling Green Independent Exhibits 17-19.

¹⁵⁹ See, Bowling Green Independent Exhibit 19 and testimony of Herron.

¹⁶⁰ See, testimony of Herron and Lawson.

then used Warren County's own Site Based Decision Making Council ("SBDM") 2014-2015 tentative allocations for each school to determine whether each school would need to hire an additional teacher if the students enrolled in Warren County.¹⁶¹ Based on this analysis, he determined that Warren County would need to hire 4 additional teachers: 1 at Greenwood High School, 1 at Natcher Elementary, 1 at Richardsville Elementary, and 1 at Warren East High School.¹⁶² At the time he prepared his analysis, Herron was unaware of the number of kindergarten students that were included in the list of 55, so he allocated full SEEK to each student in computing the financial impact, which was a conservative measure in Warren County's favor.¹⁶³ Based on his conservative analysis, Herron concluded that Warren County would only benefit in the amount of \$21,679.36 from the additional SEEK dollars attributable to the 55 students after accounting for the 4 new teachers.¹⁶⁴

When Herron became aware that of the 55 students, 24 would be kindergarteners, he recalculated his analysis based on the fact school districts only receive one-half of the SEEK funding amount for kindergarteners.¹⁶⁵ After conducting this analysis, he determined that Warren County would actually sustain a loss of \$25,252 next year if it hires the 4 teachers that it would need based on its SBDM tentative allocations. Herron's analysis is more reliable than the analysis conducted by McIntyre, discussed below, because Herron's analysis is based on the actual students that are at issue and their home schools, as opposed to the historical data used in McIntyre's analysis.

¹⁶¹ See, testimony of Herron.

¹⁶² See, Bowling Green Independent Exhibit 19.

¹⁶³ See, testimony of Herron.

¹⁶⁴ *Id.*, see also, Bowling Green Independent Exhibit 19.

¹⁶⁵ See, testimony of Herron.

The SBDM allocations for Warren County produced in Joint Exhibit 65 also demonstrate that SEEK allocations are not sufficient to operate a school.¹⁶⁶ Using one of these allocation sheets, Dr. Vick demonstrated that each student is allocated a certain amount of dollars of his or her SEEK funds to be used to operate the school he or she attends.¹⁶⁷ Based on the example Dr. Vick used during the hearing, approximately \$2,600 of each student's SEEK funding at Alvaton Elementary is used to run the school.¹⁶⁸ This allocation does not take into account several additional costs, including utilities, transportation, expenditures for programs such as art, band and physical education, etc.¹⁶⁹ Dr. Vick testified that this allocation is not sufficient to run a school, but demonstrates that at a minimum, this amount must be allocated for every student attending that school.

Herron also prepared an analysis of the tax dollars that Warren County is currently collecting on the 764 of its residents that it is not educating.¹⁷⁰ In conducting this analysis, Herron began by estimating the property taxes that Warren County receives from the 764 Warren County residents attending Bowling Green Independent.¹⁷¹ Of the 764, there are 491 unduplicated property owners, excluding apartment complexes, and the average home value of these 491 residential properties based on information provided by the Warren County Property Valuation Administrator is \$291,829.¹⁷² This average was used in other calculations within the document, but the property tax attributable to these homes was calculated by applying Warren County's 0.42% property tax rate to the total assessed value of the 491 properties.¹⁷³ Based on

¹⁶⁶ See, testimony of Dr. Vick.

¹⁶⁷ See, testimony of Dr. Vick.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See, Bowling Green Independent Exhibit 17.

¹⁷¹ See, testimony of Herron.

¹⁷² See, testimony of Herron and Bowling Green Independent Exhibit 17.

¹⁷³ *Id.*

this calculation, Warren County receives approximately \$601,809 in property tax revenue for students that it does not have to educate.¹⁷⁴

Using the average home price of \$291,829, Craig Stahl, a Senior Vice President at American Bank and Trust, Co., estimated that the average income required to afford such a home was \$80,400 per year.¹⁷⁵ Assuming this is the average household income of the 491 property owners, if Warren County's occupational tax of 0.50% is applied to these households, Warren County receives approximately \$197,382 per year in occupational tax revenue attributable to the 764 students for which it incurs no cost in educating.¹⁷⁶

Herron also calculated the average utility tax assessed per household in the Warren County School District to be \$159.¹⁷⁷ If 511 households pay that average utility tax (this number includes families living in rental complexes), Warren County receives approximately \$81,138 in utility taxes on the 764 students.¹⁷⁸ Based on Herron's analysis, he estimates that Warren County receives in total approximately \$880,330 in tax revenue on the 764 students for which it incurs no cost because these students are being educated at Bowling Green Independent.¹⁷⁹ This calculation does not include the homes of the CDE students living in Warren County but attending Bowling Green Independent.

If Warren County reduces the number of its residents it permits to attend Bowling Green Independent, these tax assessments will not change, but the number of students Warren County is tasked with educating will increase, thereby diminishing the amount of tax dollars available to educate each student.¹⁸⁰ To illustrate this, Herron prepared an analysis of the tax revenue

¹⁷⁴ *Id.*

¹⁷⁵ *See*, Bowling Green Independent Exhibit 16 and testimony of Herron.

¹⁷⁶ *See*, testimony of Herron and Bowling Green Independent Exhibit 17.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *See*, testimony of Herron and Dr. Vick.

Warren County receives on a per pupil basis and determined to what level Warren County would have to raise its property tax rate in order to maintain the same level of funding per student if some or all of the Warren County residents attending Bowling Green Independent return to Warren County.¹⁸¹ Next year, if 55 more students attend Warren County as a result of the reduction in the nonresident student agreement between the districts, Warren County would have to raise its property tax rate from 0.42% to 0.423% in order to maintain its current level of tax dollars spent per student of \$3,400.99.¹⁸² If over time all Warren County residents are returned to Warren County, it would have to increase its property tax rate to 0.46% in order to maintain the same level of per pupil tax revenue.¹⁸³ This calculation is relevant to demonstrate if Warren County has more students to educate based on the same tax funding, it has less funds to spend on each individual student, thereby diluting the local funding and diminishing the level of educational services to its students.¹⁸⁴

Warren County's Director of Finance, Chris McIntyre, developed two alternate analyses projecting the financial impact the increase in 41 students will have on Warren County. Warren County contends that 41, as opposed to 55, is the number of students that will return to Bowling Green Independent if only siblings are allowed to enroll in Bowling Green Independent next year. Both of these spreadsheets estimate enrollment at each of Warren County's schools based on historical enrollment data provided by Bowling Green Independent.¹⁸⁵ These estimates do not correspond to the actual schools these students would attend according to Bowling Green Independent Exhibit 6, which lists the students, in order of priority, that are affected by this decision.

¹⁸¹ See, testimony of Herron and Bowling Green Independent Exhibit 18.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See, testimony of Dr. Vick.

¹⁸⁵ See, testimony of McIntyre.

In McIntyre's first spreadsheet, using the flawed enrollment allocations, McIntyre calculated the potential benefit to Warren County using actual enrollment numbers from Warren County as of December 1, 2013.¹⁸⁶ He projected two scenarios in this spreadsheet: 1) Warren County will not have to hire any additional staff to absorb these 41 students, and 2) Warren County will need to hire one teacher and one aide at Natcher Elementary.¹⁸⁷ Assuming Warren County will not have to hire any new staff to accommodate the 41 students, McIntyre predicts a financial gain of approximately \$106,601.¹⁸⁸ Taking into account the possibility that Warren County may need to hire an elementary teacher and aide, McIntyre predicts that Warren County will see a financial gain of approximately \$32,056.¹⁸⁹

In McIntyre's second spreadsheet, McIntyre calculated the potential impact on Warren County using projected enrollment for the 2014-2015 school year based on Warren County's SBDM allocations.¹⁹⁰ One of the two scenarios presented on this spreadsheet demonstrates that Warren County could actually sustain a loss next year if a teacher and aide must be hired at Natcher Elementary and a teacher must be hired at Greenwood High School.¹⁹¹ McIntyre's first scenario on this spreadsheet, assuming that no additional staff must be hired to accommodate the 41 students, predicts a gain of approximately \$108,941.¹⁹² The second scenario, assuming the 3 additional hires, projects a loss of approximately \$28,292.¹⁹³ This scenario is the closest to that predicted by Herron based on the districted schools of the actual children affected, and still does not account for the hiring of 4 teachers as Herron predicted based on these actual districted locations. All of McIntyre's scenarios overestimate the amount of additional funding Warren

¹⁸⁶ See, testimony of McIntyre.

¹⁸⁷ See, testimony of McIntyre.

¹⁸⁸ See, testimony of McIntyre and Warren County Exhibit 13, page 1.

¹⁸⁹ *Id.*

¹⁹⁰ See, testimony of McIntyre.

¹⁹¹ See, testimony of McIntyre and Warren County Exhibit 13, page 2.

¹⁹² *Id.*

¹⁹³ *Id.*

County would receive, because there is an offset to the SEEK funding formula for the local property tax assessment.¹⁹⁴ This offset, referred to as the local effort, provides a deduction in the total SEEK funds allocated to a school district equal to 30 cents per \$100 of local property tax assessment.¹⁹⁵ Furthermore, because McIntyre's calculations do not accurately project where the 41 (or 55) students would attend within Warren County, his analysis is less reliable than Herron's analysis that examined the students' actual addresses then used Warren County SBDM allocations to calculate additional teachers.

F. Impact on Families

Section 4 of the Memorandum of Agreement states that "[i]t is agreed that both the Warren County and Bowling Green City School District will act in good faith to accommodate the needs and desires of parents in the Bowling Green/Warren County community consistent with student capacity in Bowling Green City Schools and the best interest of Warren County Schools."¹⁹⁶ Even though this Agreement is no longer in effect, the Commissioner has recognized it provides a good guide for the future, thereby implicitly recognizing that the needs and desires of the community are important in determining the number of Warren County residents that should be permitted to attend Bowling Green Independent. Furthermore, family inconvenience is a factor the Commissioner and the Hearing Officer have considered relevant in past nonresident student agreement appeals.¹⁹⁷ The Commissioner found in his Final Order on the 2013-2014 nonresident agreement dispute between the two districts that "the community

¹⁹⁴ See, testimony of McElroy.

¹⁹⁵ See, testimony of McElroy.

¹⁹⁶ See, Joint Exhibit 1 at JE 1, bates nos. 1390-1391.

¹⁹⁷ See, Joint Exhibit 1 [April 13, 2010 Kentucky Board of Education Final Review Decision (attached to 2013 post-hearing brief as Attachment 1); *Board of Education for the Raceland-Worthington Independent Schools v. Board of Education for the Greenup County Public School District*, Recommended Findings of Fact, Conclusions of Law, and Recommended Order, Appeal No. 2013-03, p. 18 (relevant portions of which are attached to 2013 post-hearing brief as Attachment 2); see also, Commissioner's Decision Pursuant to KRS 157.350 (attached to 2013 post-hearing brief as Attachment 3), (bates nos. 203-217)].

reasonably relied upon existing arrangements in choosing where to buy homes, enroll their children, and accept employment. A reduction of 86 students impacts certain families immediately, regardless of whether the Bowling Green Independent school system can absorb the change or not."¹⁹⁸

Kenny Cravens ("Cravens") testified at the hearing regarding the impact Warren County's decision will have on his daughter and the weight the longstanding practice between the districts had on his decision to purchase a home in the Warren County School District in 2010. He is the father of Lauren Cravens, who is 1 of the 55 students affected by Warren County's decision, and Caroline Cravens, who will be enrolled in St. Joseph next year.¹⁹⁹ When his family moved back to the Warren County/Bowling Green community in 2010, his priority in searching for a home was that it be located within the Bowling Green Independent School District.²⁰⁰ However, after looking at approximately two dozen homes, only one home fell within the Bowling Green Independent boundaries and that home did not fit his family's needs.²⁰¹ While living in the Bowling Green Independent School District was a priority to Cravens and his family, because his mother-in-law lived with his family and helped to care for his children, any home he purchased required a mother-in-law suite.²⁰² Because the home located within the Bowling Green Independent district did not have either a mother-in-law suite or a basement, his family could not purchase this home and was forced to buy a home within the Warren County School District.²⁰³

¹⁹⁸ See, Joint Exhibit 1 (Commissioner's Final Order at page 60, bates no. 466).

¹⁹⁹ See, Bowling Green Independent Exhibit 6 and testimony of Cravens.

²⁰⁰ See, testimony of Cravens.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

After his two children attended Natcher Elementary for one year, Cravens determined that while Natcher was a good school, it was not challenging enough for his daughters' needs.²⁰⁴ At this point, he researched his options and decided to enroll his daughters in St. Joseph with the understanding that their enrollment in St. Joseph would essentially guarantee their admission into Bowling Green High School in the 9th grade.²⁰⁵ After looking into South Warren and Greenwood as high school options for Lauren, Cravens still believes that BGHS is the best option for Lauren based on the programming offered at each of the high schools.²⁰⁶ Cravens also believes that requiring Lauren to attend high school somewhere other than BGHS would be almost devastating to her based on the relationships that she has formed with her peers at St. Joseph who will be attending BGHS next year.²⁰⁷ He testified that the dispute between the districts is something his daughter and her peers talk about, and that the situation is obviously stressful to them.²⁰⁸

The situation involving the Cravens family is all too common in the Bowling Green and Warren County community today. This nonresident agreement dispute is causing significant stress to families who have for years relied upon the historical arrangement between Bowling Green Independent and Warren County. Allowing Warren County to reduce the number of its residents that are permitted to attend Bowling Green Independent will continue to cause stress on several families throughout the community for no good reason.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

IV. The Commissioner's Order allowing 750 students to attend Bowling Green Independent was not based on the number of CDE students attending Bowling Green Independent.

Warren County attempts to argue that the Commissioner based his Final Order in last year's appeal on Tinius' statement to Stewart that just over 100 students whose parents were employed by Bowling Green Independent were enrolled in the district. However, this assertion is misguided.

In its appeal last year, Bowling Green Independent requested that the Commissioner allow 750 Warren County residents to attend Bowling Green Independent with SEEK funding following those students for the 2013-2014 school year.²⁰⁹ This particular number was not at issue during the appeal. Bowling Green Independent voluntarily decided to reduce the number of students from 850 to 750.²¹⁰ HB 182 does not require that CDE students be deducted from the number of students allowed under nonresident agreements.²¹¹ Furthermore, Wayne Young, the Executive Director of the Kentucky Association of School Administrators, explained to Tinius in April of 2013 that there was no expectation that nonresident agreements be amended or reduced in response to HB 182.²¹² Because HB 182 did not require CDE students to be deducted from nonresident agreements, and because the number of CDE students was not at issue in last year's appeal, the Commissioner did not based his Final Order on Tinius' statement that an average of just over 100 CDE students attended Bowling Green Independent over the last 5 years.

²⁰⁹ See, Joint Exhibit 1 (Bowling Green Independent's appeal regarding the nonresident dispute for the 2013-2014 school year, bates nos. 1-13).

²¹⁰ See, testimony of Tinius.

²¹¹ See, testimony of Tinius.

²¹² See, testimony of Tinius.

V. Bowling Green Independent has appropriately handled students who move from Bowling Green Independent to Warren County throughout the school year.

Both Lawson and Tinius testified regarding Bowling Green Independent's practice of allowing students to finish the school year at Bowling Green Independent if they move and become nonresident during the school year.²¹³ Lawson testified that Bowling Green Independent follows this practice because it believes the best interests of the students warrant allowing the students to remain enrolled in their current school until a natural break, such as the end of a school year.²¹⁴ Under the nonresident student agreements with Warren County since the implementation of the Memorandum of Agreement, the practice has been to "reconcile" the nonresident student numbers at the end of the school year, with any students over the nonresident student agreement cap being reduced from the number of available spots for the upcoming year.²¹⁵ This was the understanding between Tinius and former Warren County Superintendents Dale Brown and Tim Murley and has been followed for the past 13 years.²¹⁶ This practice has allowed all students who have moved or changed classification for another reason during the school year to remain enrolled in Bowling Green Independent in future years. During meetings with Warren County Board Chairman Kerry Young ("Young") and Interim Superintendent Kathy Goff in April of 2013, Tinius and Bowling Green Board Member Mike Bishop ("Bishop") explained this policy, and neither Young nor Goff voiced any objection to the practice.²¹⁷

Stewart testified that Warren County likewise prefers to wait for a natural break in the school year, whether it be the end of the school year or the end of the semester, to send any students back to their districted schools. Lawson and Tinius testified that since the

²¹³ See, testimony of Tinius and Lawson.

²¹⁴ See, testimony of Lawson.

²¹⁵ See, testimony of Lawson.

²¹⁶ See, testimony of Tinius.

²¹⁷ See, testimony of Bishop and Tinius.

implementation of the first nonresident student cap in 2001, Warren County has never objected to Bowling Green Independent's practice of reconciling these students at the end of the year, knowing that the number typically exceeds the nonresident student cap by the end of the year.

In order to continue this practice of not disrupting a student's educational experience simply because the student's parents choose to move, Bowling Green Independent requests a growth factor be applied to the 750 number of nonresident students permitted to attend Bowling Green Independent under the Commissioner's Final Order last year, in which the 2001 Memorandum of Agreement was recognized as "a good guide for future nonresident arrangements between the two school districts." This growth factor, derived from Warren County's 1.43% growth, would allow 11 additional Warren County nonresident students to attend Bowling Green Independent in 2014-2015, for a total of 761.²¹⁸

VI. The Commissioner's Order should not address Bowling Green Independent's internal policy regarding the admission of nonresident students.

Warren County has been unable to demonstrate that Bowling Green Independent's priority policy is discriminatory in any way. Since 2001, when this priority policy was put into place due to Warren County's imposition of a cap on the number of its residents it would permit to attend Bowling Green Independent with SEEK funding following, there have been no complaints to the Bowling Green Board or to the Bowling Green Independent Central Office regarding the priority system.²¹⁹

Lawson described in detail during the hearing the rational basis behind each of the priorities listed on Bowling Green Independent's application for nonresident enrollment. After admitting currently enrolled students and siblings of currently enrolled siblings, priority is given to students transferring from private schools located within the Bowling Green Independent

²¹⁸ See, testimony of Lawson.

²¹⁹ See, testimony of Bishop, Lawson, and Tinius.

School District.²²⁰ These private schools are St. Joseph and Holy Trinity, two parochial schools located within the Bowling Green Independent attendance area.²²¹ Priority is given to these students to provide continuity of certain services and because of the longstanding relationship between Bowling Green Independent and St. Joseph in particular. Bowling Green Independent is tasked with providing certain services, including special education services, to private schools within its attendance boundaries.²²² As such, Bowling Green Independent has already established a relationship with several of the children attending these private schools prior to their application to Bowling Green Independent.²²³

Priority is given next to students of families owning property within the Bowling Green Independent School District.²²⁴ This category is a priority because these families have supported Bowling Green Independent through paying property taxes on their property located within Bowling Green Independent's boundaries.²²⁵ The next priority, given for students of Western Kentucky University ("WKU") faculty and staff, is given for several reasons. First, Bowling Green Independent has had a longstanding relationship with WKU through its participation in programs that have benefited not only the university but Bowling Green Independent as well.²²⁶ Additionally, McNeill Elementary is located adjacent to WKU, so it is extremely convenient for WKU employees to participate in their children's education at an elementary school located directly across the street.²²⁷

²²⁰ See, Joint Exhibit 16.

²²¹ See, testimony of Lawson.

²²² See, testimony of Lawson and Tinius.

²²³ *Id.*

²²⁴ See, Joint Exhibit 16.

²²⁵ See, testimony of Lawson and Bishop.

²²⁶ See, testimony of Lawson.

²²⁷ *Id.*

Priority is also given to kindergarten and primary students.²²⁸ This priority also has several rational reasons for being included on Bowling Green Independent's application. First, Bowling Green Independent feels the first years of a child's education are critical, and if it is going to educate a student, the earlier the student can enroll in the district, the better.²²⁹ This priority is also given to aid in planning. Enrolling students at the kindergarten or early primary levels serves to level out the grades each year and aids Bowling Green Independent in planning for the future if it knows the number of kindergarten students who will enroll in classrooms each school year.²³⁰ None of Bowling Green Independent's priorities are included on its application to give any benefit to "students of means" as Warren County argues. Each has a logical and nondiscriminatory basis.

Warren County takes issue with the fact that Bowling Green Independent has any policy that allows it to determine which nonresident students are admitted and in which order and insists that random selection is the only acceptable criteria. However, within its district, Warren County has an in-district transfer policy that is completely arbitrary in some instances. For example, in some of its high schools, the high school principal is given a 3% discretionary allowance within which he is free to admit the in-district transfer students of his choice.²³¹ This can hardly be said to be a "fair" policy, if Bowling Green Independent's logical priority system is not fair.

Furthermore, even assuming that Warren County could prove that Bowling Green Independent's priority policy gives preference to families based on financial position (which Bowling Green Independent disputes), Dr. Mickelson's testimony demonstrates that in a

²²⁸ See, Joint Exhibit 16; *see also*, testimony of Bishop.

²²⁹ See, testimony of Lawson.

²³⁰ See, testimony of Lawson.

²³¹ See, testimony of Young.

situation similar to that between Warren County and Bowling Green Independent, such a policy could foster or promote diversity. If the school that gives priority to students with more financial means is a school with a lower socioeconomic makeup, admitting students of greater financial means would actually produce greater diversity.²³² This is precisely the case at Bowling Green Independent, a school with a free and reduced lunch population of almost 55%.

If Bowling Green Independent must abandon its priority policy, the random draw process now insisted upon by Warren County is an unworkable alternative.²³³ A random draw would make planning for future school years nearly impossible. Bowling Green Independent would not be able to predict the staffing needs of any of its schools for upcoming school years because there would be no certainty as to the grade levels in which the randomly selected students would fall.²³⁴ In its last proposed nonresident agreement, Bowling Green Independent was willing to adopt a "date of application" policy as a concession to attempt to reach an agreement for the upcoming school year.²³⁵ This method was chosen by Bowling Green Independent because Warren County suggested that such a method would be acceptable in its post-hearing brief last year.²³⁶ As Warren County had suggested this as one of two viable alternatives, Bowling Green Independent believed this would be an acceptable compromise to both parties. If the Commissioner does require Bowling Green Independent to change its application and admission process, Bowling Green Independent requests that a date of application system be considered. However, Bowling Green Independent maintains that this internal policy is not an issue that can or should be decided in this appeal.

²³² See, testimony of Dr. Mickelson.

²³³ See, testimony of Bishop.

²³⁴ See, testimony of Bishop.

²³⁵ See, testimony of Bishop and Tinius.

²³⁶ See, testimony of Tinius and Joint Exhibit 1 (Warren County's post-hearing brief, bates no. 229).

CONCLUSION

The facts of this year's nonresident student disagreement between Warren County and Bowling Green Independent are substantially the same as last year's disagreement. Warren County has presented no evidence that the Hearing Officer's recommendation or the Commissioner's decision should be any different than last year. The Commissioner found last year that any minimal financial benefit to Warren County was not sufficient to justify a reduction in the number of Warren County residents attending Bowling Green Independent. Because any potential financial benefit to Warren County is less than the potential benefit expressed during last year's hearing, issue preclusion applies to warrant a decision in Bowling Green Independent's favor.

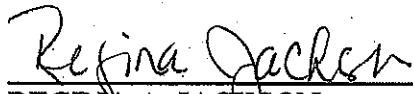
Warren County is a high achieving growth district and is in good financial position. Bowling Green Independent is not a vastly superior district whose enrollment of Warren County residents drains academic and financial resources from Warren County in an amount sufficient to cause any kind of measurable detriment to Warren County. Both Bowling Green Independent and Warren County are currently academically, demographically, and financially sound.

A decision allowing Warren County to reduce the number of its residents for which it releases SEEK funding will only serve to cause a disproportionately negative impact on Bowling Green Independent, without significantly strengthening Warren County. Lastly, the financial benefit that Warren County professes it will receive by educating these additional students is at best speculative, and it is not sufficient to outweigh the detriment that such a reduction will cause Bowling Green Independent if the Warren County Board's decision is permitted to stand. In order to ensure that both districts continue to thrive, Bowling Green Independent requests that the Commissioner declare a minimum of 750 Warren County residents be permitted to attend

Bowling Green Independent in 2014-2015. Bowling Green Independent further requests that the Commissioner apply a growth factor accounting for Warren County's growth since 2012-2013 to that number to permit 761 Warren County residents to attend Bowling Green Independent in 2014-2015.

Respectfully submitted,

ENGLISH, LUCAS, PRIEST & OWSLEY, LLP
1101 College Street, P.O. Box 770
Bowling Green, KY 42102-0770
Telephone: 270-781-6500
Facsimile: 270-782-7782


REGINA A. JACKSON
MICHAEL A. OWSLEY
JESSICA R. SURBER
ATTORNEYS FOR THE APPELLEE

CERTIFICATE OF SERVICE

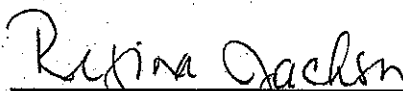
The undersigned hereby certifies that the foregoing has this day been sent via e-mail or regular U.S. Mail to the following:

Mr. Mike Wilson (via e-mail)
Hearing Officer
P.O. Box 4275
Lexington, KY 40544

Ms. Jacinta F. Porter (via e-mail)
Bell, Orr, Ayers & Moore
1010 College Street
P.O. Box 738
Bowling Green, KY 42102

Mr. Kevin Brown (via U.S. Mail)
Kentucky Department of Education
Capital Plaza Tower
500 Metro St.
Frankfort, KY 40601

This the 12th day of May, 2014.



REGINA A. JACKSON
MICHAEL A. OWSLEY
JESSICA R. SURBER

2009994