

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF EDUCATION
ADMINISTRATIVE ACTION NO. 14-EAHC-0192**

COMMISSIONER OF EDUCATION,
DEPARTMENT OF EDUCATION

PETITIONER

v.

BOARD OF EDUCATION FOR
BREATHITT COUNTY SCHOOL DISTRICT

RESPONDENT

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
FINAL ORDER
NOTICE OF APPEAL RIGHTS**

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An Administrative Hearing was conducted in this matter on August 26, 2014, at 120 Capital Plaza Tower, 500 Mero Street, Frankfort Kentucky. The Kentucky State Board of Education (KBE) sat in open session as the decision-maker. Those present for the State Board were Trevor Bonnstetter, Grayson Boyd, Samuel Hinkle, David Karem, Roger Marcum, Jonathan Parrent, Nawanna Privett, William Twyman, and Mary Gwen Wheeler. Roger Marcum presided as Chair. Lisa K. Lang, Assistant General Counsel, and David Wickersham, Policy Advisor for the Office of Next Generation Schools and Districts and Special Counsel, appeared for the Petitioner, Commissioner of Education, Kentucky Department of Education (KDE). Larry Hammond, State Manager, for Breathitt County School District, was the primary KDE representative. Ned Pillersdorf, Pillersdorf DeRossett & Lane, and Liz Edmondson, Liz Edmondson Law PLLC, were present for the Board of Education for Breathitt County School District. Ruschelle Hamilton, Chair of the Breathitt County Board of Education, was the primary Breathitt Board representative. Members of the May 2014 Management Audit Team for the KDE as well as the other two Breathitt County Board members, Rebecca Holbrook-Watkins and Albert Little, who were present, were not separated as witnesses but were able to remain in the

hearing room.

The following witnesses testified: Christine Duke, Elementary Science Consultant, Division of Program Standards, KDE; Judith Littleton, Branch Manager, Division of Consolidated Plans and Audits, KDE; Kay Kennedy, Director, Division of District Support, KDE; Cheri Meadows, Branch Manager, Student Tracking & Transportation Data Branch, KDE; Gregory Dunbar, Branch Manager, District Facilities Branch, KDE; Susan Barkley, Assistant Director, Division of District Support, KDE; Larry Hammond, State Manager, KDE; Ruschelle Hamilton, Chair, Breathitt County Board; Albert Little, Member Breathitt County Board; and Rebecca Holbrook Watkins, Member Breathitt County Board. Twenty-six exhibits were entered into the record of the Hearing.

The Hearing concerned whether the Commissioner of the Kentucky Department of Education proved by the preponderance of the evidence that continued state management is required because there continues to be a significant lack of efficiency and effectiveness in local governance and administration of the Breathitt County School District pursuant to KRS 158.785(5) and KRS 158.785(8). At the conclusion of the Hearing and after open deliberation, the Kentucky State Board of Education unanimously concluded that Breathitt County School District should remain a state managed district for up to three more consecutive years from the date of this order.

FINDINGS OF FACT

1. As a result of the collection of data from Breathitt School District and the subsequent on-site review, the Commissioner of Education ordered a management audit of the District consistent with KRS 158.785 and 703 KAR 3:205. Because the management audit, which included on-site visits in November 1-2, 2012, revealed a pattern of significant

ineffectiveness and inefficiency in the governance and administration of the school district, the Kentucky Board of Education ordered that Breathitt County School District be designated as a state managed school district in December, 2012. The designation by the KBE was the result of the recommendation of the Commissioner and of the Breathitt County Board, sitting at the time, which waived its right to a KRS 13B administrative hearing in regard to the designation of state management.

2. On October 31, 2013, a newly constituted Breathitt County Board of Education met with members of the KDE and the KBE and worked out a Mediation Conference Settlement Agreement. The core of the Mediation Agreement was:

New management audit shall occur on or before June 30, 2014. It is therefore anticipated that on or before September 1, 2014 state management of the Breathitt County School District will terminate or be extended for a further period based upon the recommendation of the new management audit....

The agreement was signed by Bobby D. Gross, Ruschelle Hamilton, Albert Little, Rebecca Holbrook-Watkins, and Ina H. Southwood, who composed the Breathitt County Board of Education. Lisa K. Lang, Larry B. Hammond, Kevin C. Brown, Hiren Desai and David Wickersham signed for the KDE and KBE. Exhibit 24 to the Hearing.

3. The new management audit mandated by the Mediation Agreement included on-site visits on May 19-20, 2014. A Final Management Audit Report and Executive Summary was prepared by the audit team and submitted to Dr. Terry Holliday, Commission of Education. After reviewing the Audit Report and Executive Summary, Holliday wrote Roger L. Marcum, Chair, Kentucky Board of Education, stating that using 703 KAR 3:205 Section 2 as a guide, he concluded that

[W]hile there has been much systemic improvement during the first seventeen months of state management, the significant lack of efficiency and effectiveness in governance and administration of the school district has not yet been fully

addressed in all areas, especially at the local school level and at the local board level. Until the development and deployment of specific processes introduced by the State Manager during state management have been fully implemented throughout the district, I recommend that the Breathitt County School District continue its designation as a state-managed district.

Ex. 2.

4. Holliday's letter continued with a lengthy Summary of Pertinent Findings which tracked the comprehensive audit areas set out in 703 KAR 3:205– Planning, Operational support, Fiscal management, Personnel administration, and Instructional management. The witnesses at the Administrative Hearing introduced into evidence findings in regard to the status of the Breathitt County Schools in the fall of 2012 as well as the changes and improvement made under state management and testimony as to what should be done in the future to prepare the students for college and for careers.

5. Christine Duke, who is an Elementary Science Consultant, has served 26 years in the classroom and 2 years with the KDE. She, as well as most of the other KDE witnesses, served on both the 2012 and the 2014 audits. Duke testified about the findings in regard to instructional management. In 2014 the three instructional management team members interviewed all of the county principals and those serving in the Central Office as well as teachers, guidance counselors, and support staff. Duke stressed that Breathitt Schools had no systematic plan for gathering, reporting, and sharing data. The teachers were not aware how behind they were in using best practices. There has been an emphasis on general professional development, but individualized professional development is now needed. Duke reported, however, that some principals objected to changes, such as grouping students. The gains that have been made are inconsistent. Most of the pedagogy and methodology gains had been made at the Central Office level, so now most of the work should focus on the classroom level. On-going

support is necessary to implement the necessary improvements.

6. Judith Littleton, who is a Branch Manager in the KDE, testified about the audit findings in regard to School Based Decision Making (SBDM) in Breathitt County in 2012 and 2014. She stated that SBDM Councils at each school have statutory authority over curriculum, instruction, discipline, extra curricular activities, budgeting, and staff and job classifications. Student achievement is very much related to SBDM Councils. Each year a SBDM Council should put out a comprehensive school improvement plan after test results are received. It was discovered in the 2012 audit, however, that most of the decision making was done by the central office in Breathitt County and not by the local councils. “They weren’t even going through the motions of having school councils.” After state management began, Tim Spencer, the Assistant Superintendent in Breathitt County, became SBDM coordinator. He received training and began working with KDE to help the councils become compliant with the necessary policies. He goes to council meetings, has begun local SBDM training with individual councils and has started a council of councils. Good work has been done at the Central Office but only recently has work begun at the local level. Continued state management is necessary to keep the Breathitt County District from reverting back to centralized district based management.

7. Kay Kennedy, who is the Director of the Division of District Support, was the first witness who emphasized the importance of school attendance. Referring to Ex. 4 and Ex. 5, Kennedy pointed out that Unexcused tardies at the Breathitt County High School in the 2012-2013 school year totaled 5825, while Unexcused tardies in the 2013-2014 school year had dropped to 2043. The average daily attendance in 2012-2013 was 88.44%, while the average daily attendance in 2013-2014 was 92.44%. The aim is to reach 95%. She pointed out that the Support Excellence in Education in Kentucky (SEEK) formula for school funding is based on the

adjusted daily average attendance. Thus school attendance is essential for academic achievement as well as economic well-being of Breathitt County Schools. Also, when children are at school they are being well fed and their health needs are being supported.

8. Cheri Meadows, a Branch Manager who has been at the KDE for 25 years, testified primarily about pupil transportation, enrollment, district health, and attendance. Meadows stated that in 2012 the district had no Director of Pupil Personnel, a position which is required by law. She stated that it was recommended that the district cease using vans and personal vehicles to transport students except in very limited situations, because they are not the safest mode of transportation. Also individual Board members were making transportation decisions rather than the Director of Pupil Transportation. Now significant safety and monetary gains have been made by the Director of Pupil Transportation, who is able to do his job without Board interference. Wayne Sizemore has been a caring and hard working District Health Coordinator as an additional assignment, but a Registered Nurse should take over that position. Health services are needed at the local level with nurses trained especially in regard to asthma so that students can be taken care of at school rather than at home or in the emergency room. Some schools have never had health rooms. Also check-in/check-out and attendance procedures varied from school to school. Uniform attendance policies and procedures are necessary and should be in place not only for SEEK funding but also for safety. Next year KDE plans on working on data integrity, *see*, Ex. 11, and other attendance issues at the school level. *See*, Ex. 2. The Board did not recommend approving the revised attendance policies Larry Hammond proposed, but it is hoped that they will recommend that they be adopted.

9. Gregory Dunbar is a Licensed Architect and Manager of the District Facilities Branch in the KDE. He testified that 5 out of the 8 Breathitt County Schools are in generally

poor condition. *See, Ex. 2.* The Carl Perkins Center's roof is leaking badly and needs to be replaced. Marie Roberts-Caney Elementary School does not have a working HVAC system. Rousseau Elementary School was flooded and was repaired in 2009 by plans drawn up by the then Superintendent, although the plans were never submitted to the KDE. In school year 2012-2013, Rousseau was closed under state management, in part because it had the capacity for 250 students, but historically has had considerably less than 100 students. In fact, most of the schools were under-used with most being at about 50% capacity. The schools in the district rank near the bottom in energy efficiency. The 2013 District Facilities Plan indicated that the district needs \$28,000,000 for facilities repairs and improvements, but the district's bonding capacity is only \$3,800,000. The district can receive some funds from the state, but in order to do so it must raise local taxes by another nickel. In the past the Breathitt County Board of Education did not appear to understand the capital construction process and the way that public funds are used in that process.

10. Susan Barkley is a Certified Public Accountant and Assistant Director, Division of District Support, who focuses primarily on finance and funding. The 2012 audit disclosed that the Financial Officer, Darnell McIntosh, was making good fiscal recommendations, but the Superintendent and the Board ignored them. Thus, the district's financial health was deteriorating. She testified that the Breathitt County School District must either cut expenses or increase revenues. The district is still in financial crisis. Under state management some reduction in expenditures was achieved by: closing and selling Rousseau Elementary, which needs repairs and is in a flood plain; closing a day care that received over \$100,000 a year, but served no viable educational purpose; and selling excess school buses. Also there have been some staffing cuts. Working to increase school attendance is a means to increase revenue,

because an increase in school attendance by 1% increases SEEK funds by approximately \$80,000. Whereas in 2012, Breathitt County lost almost \$200,000 in SEEK funds because the district schools were not open the required minimum number of days. The school district's mandated reserves are dangerously low and have been declining since 2009. *See Ex. 18.* From 2009-2014 the district did not adopt the maximum tax rate possible, 4%, without going to the voters. The district needs to pass another nickel tax and consistently support a 4% tax increase, but it has been reluctant to do either. Barkley felt that it is critical that all policies, procedures, and cuts remain in effect for continued recovery.

11. Larry Hammond spent 34 years in Rockcastle County as an educator. During the last half of that period he was the Superintendent of Rockcastle County Schools. Since September, 2012, Hammond has served as an executive coach for new superintendents. As state manager Hammond is the representative of the Commissioner of Education, who during state management, has the powers of a superintendent and of the local board. Hammond also stated that he viewed part of his state manager role as more of a trainer. Hammond's testimony reflected the difficulties and tension in trying to change things in a school district that had been tightly and selfishly run for a long time, although he is dealing with a new Board. The longest tenure on the Board he is working with is a little over 2 years. Ruschelle Hamilton and Rebecca Holbrook-Watkins, in their testimony, described Hammond as dictatorial and inattentive to their views. Albert Little was the most faithful Board member, attending 100% of the meetings; Hamilton and Holbrook-Watkins were present at 79% of the meetings. Holbrook testified that her work as a nurse meant that she was occasionally scheduled for emergency room duty at times that conflicted with Board meetings. Ina Southworth attended 76% of the meetings despite poor health. Gross attended only 50% of the Board meetings.

12. Hammond testified about his struggles in regard to various of the issues that previous witnesses had touched on. Hammond said that he considered a Breathitt County school attendance policy as essential. Eventually a policy was put in place which permitted 19 days of being absent during a school year and then the student lost extracurricular privileges. Holbrook-Watkins, who had opposed the specifics of the proposed policy, said that she thought that parents should be notified about tardies and that there should be a redemption policy for students so that they could continue extracurricular activities. The Board also did not support a proposed snow plan that Hammond put into operation.

13. The Board meeting at which the closing of Rousseau Elementary was on the agenda was abruptly adjourned by the Board because the Board would not accept Hammond's proposed agenda with approximately 40 items, including the closing of Rousseau, listed as Consent Agenda items. *See Ex. 22.* In his testimony Hammond pointed out that it was costing \$435,000 to keep Rousseau open and that 16 out of the 19 individuals on the Facility Planning Committee eventually voted to close the school. Holbrook-Watkins defended her support for the continued existence of the school by pointing out that although the county had only 1800 students, it was the 11th largest geographically. The closing of Rousseau meant that some students had a long and arduous bus ride twice a day. The Board eventually supported the closing of the day care center by a vote of 4 to 1, which helped save money for education purposes.

14. Hammond argued that the district needed to add another nickel to the property tax to help the district, but he knew that the Board will not urge the citizens of the county to support it. Last year the current Breathitt Board passed a 4% increase in the school budget and approved expenditures based on that 4% increase but did not support the 4% tax rate option because the

citizens attending the Board meeting opposed a tax increase.

15. Hammond closed his testimony by saying that he thought that the current Board does not have the capacity to follow through with the sound principles begun under state management. The current Board is having difficulty in making hard decisions. It is his hope they will grow in their positions.

16. Ruschelle Hamilton is the current chair of the Breathitt County Board of Education. She was appointed to the Breathitt Board in June, 2012, and was subsequently elected unopposed. Hamilton earned a Bachelor's degree in Education and a Master's degree in Special Education. She taught school for 8 years. Hamilton criticized Hammond as dictatorial and unwilling to listen to her opinion. She stated that after the Board meeting was adjourned because of the lengthy Consent Agenda, the Commissioner chastised the Board by forcing them to sit on the sidelines for four months—not even in their current advisory capacity. *See*, Ex. 23. Hamilton conceded that she was taken aback by the 2012 audit. She has learned a lot and thinks she can make the hard decisions. Hamilton also admitted that the Board does not have a plan as to what needs to be done when it is back in control. Hamilton conceded that she did not think that the October 31, 2013 agreement would end state management on or before September 1, 2014.

17. Albert Little stated that he has a Master's equivalent from Morehead State University. He has been a teacher and a head teacher. He has also been a pastor for about 42 years. He said that he and Hammond often disagreed, but it was not a bitter relationship. He does not hesitate to voice his opinions. He is very interested in and careful about budget matters. He was convinced by Hammond about the wisdom of closing the day care and selling some school property. He agreed that attendance is most important, but disagreed that participation in graduation is an extra curricular activity. Somewhere down the road a nickle tax may be

necessary, but first cuts should be made in regard to top heavy staffing. He agreed that the system was a mess when the state took over and that the Board needs to keep the ball rolling. He said that the first thing that an independent Board will need to do is get busy with a search for a superintendent.

18. Rebecca Holbrook-Watkins has a Bachelor of Science Degree. She is a case manager for Humana; she works for Hospice; and she is an emergency room nurse. She did not realize until she came on the Board that the facilities were in such bad shape. She has strongly and regularly disagreed with Hammond. She defended herself against Hammond's contention that she was trying to influence personnel decisions. E-mails were introduced between herself and Hammond as to whether an individual on a KVEC contract should have a 220 day contract or a 240 day contract. Ex. 15. She felt she was dealing with a contract review and not a hiring decision. She thinks that the district was a mess. She thinks that the district is still top heavy in personnel costs. She is hopeful that the PVA reappraisal in Breathitt County will mean that a 4% tax increase might not be necessary. Also maybe more jobs may come into the county so that a tax increase will not be necessary.

DELIBERATIONS OF THE BOARD

19. Roger Marcum, Chair of the Kentucky Board of Education, presided over the open deliberations. He asked the board members to state their findings and concerns on each of the topics covered by the 2014 Audit.

20. Planning is just beginning in regard to working with the teachers on the local school level. Breathitt County schools must have commitment to follow through with the plans that are just beginning to make sure that students are career and college ready. Plans should have been in place last spring. The Board is unsure as to how to proceed and is not yet ready to take

over.

21. Operational Support and Fiscal Management were at a crisis stage when the state began its management. The school district's reserve funds are still only a narrow margin away from disaster. The school district's facilities need is "shocking" and "over the top." The county has \$28 million in unmet needs, but has only \$3.5 million in bonding potential. The district depends on financial support from the state. The Breathitt Board needs to make the public aware of the schools' needs and the necessity for community support.

22. Personnel Administration is 25 years behind the educational reforms in Kentucky. Hiring decisions have not been made through the local participation of parents and teachers. Long after the rest of the state began using School Based Decision Making as required by statute, Breathitt County was tightly centralized. "Why hasn't it been happening?" The local SBDM councils had no minutes, no agenda, and were not functioning in any capacity. Now the district needs the help of the KDE to nurture local participation. Local control is necessary through SBDM councils, but it will take time for leadership, decision making, and trust to develop on the local level. There is no evidence that the SBDMs are functioning.

23. Instructional Management is, at best, only superficially understood by the current Board. The strategic plan and district improvement plan are not understood. The Board members need to become very knowledgeable. Those involved in the schools need to know the details in order for Breathitt County to close the gap. Under state management, the district has already made significant improvements. But it still needs to get up to speed. The focus now needs to move toward classroom instruction and the skills of the teachers. Gap issues should be discussed every month. Board members must be really cognizant of instructional issues.

24. There are disagreements between Hammond and the Breathitt Board, but it is not

a broken relationship. The Breathitt Board's role is not to run the day-to-day activities of the school system. It needs to work toward ultimately selecting a good superintendent and establishing good policies. There needs to be a continuing dialogue and engagement between the Breathitt Board and Hammond. The three board members in attendance, as well as Hammond, show passion and commitment. Meanwhile, all of the Breathitt Board members need to be engaged and continue the dialogue.

25. The KBE found that there was no evidence of improper interference with personnel decisions by the current board. The tendered May 28, 2013, school board agenda had too many consent items on it because some of the items were contentious and required serious discussion. The agenda for board meetings should be set together by Hammond and Hamilton. As was observed by a KBE member, "what we have here is a failure to communicate."

26. The current Breathitt Board members have been in their positions for a short period of time. They inherited a lot of problems and it is unrealistic to think that the school system can be turned around in twenty months. The Breathitt Board should be there to serve the children and not the adults or themselves. Tough and unpopular decisions have to be made by the board. The district has some good key personnel already in place. The school board members are growing in their understanding as to what is required and they need to continue to grow.

27. The KBE concluded, however, "Not yet." The Breathitt Board is not ready to take control. There is a lack of knowledge and skill. The members who attended the hearing show potential and passion but need to develop knowledge and firm commitment.

CONCLUSIONS OF LAW

28. The statute governing this proceeding is KRS 158.785 (5) which states:

When the chief state school officer presents a recommendation to the state board for designation as a "state assisted district" or a "state managed district,"

he shall establish the following:

- (a) Existence of a pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district;
- (b) The pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district continues to exist; and
- (c) State assistance or state management is necessary to correct the inefficiencies and ineffectiveness.

KRS 158.785 (8) states:

A school district shall be designated as a "state managed district" until the Kentucky Board of Education determines that the pattern of ineffective and inefficient governance or administration and the specific deficiencies determined by the management audit have been corrected.

29. By a roll call vote, each member of the KBE voted that the evidence presented established that the pattern of ineffective and inefficient governance or administration and the specific deficiencies determined by the management audit of the Breathitt County Schools system have not been corrected.

FINAL ORDER OF THE BOARD

The Breathitt County School District shall remain a state managed district and the KBE shall remain in control of the district. The Commissioner of Education shall report the status of the corrective action being taken to the KBE. Breathitt County School District shall not remain a state managed district longer than three more consecutive school years unless the KBE extends the time after a complete review of a new management audit.

NOTICE OF APPEAL RIGHTS

KRS 158.785(8) states in part: "Any judicial review of actions taken by the chief state school officer or the board under KRS 158.780 or this section shall be in accordance with the provisions for conducting judicial review of administrative hearings outlined in KRS Chapter 13B."

You have a right to appeal this Final Order to the Franklin Circuit Court pursuant to KRS

13B.140 and KRS 452.430:

Pursuant to KRS 23A.010(4), “Such review [by the Circuit Court] shall not constitute an appeal but an original action.” Some courts have interpreted this language to mean that summons must be served upon filing an appeal in Circuit Court.

So ORDERED on this _____ day of October, 2014.

Roger Marcum, Chair

DRAFT

CERTIFICATE OF SERVICE

I hereby certify that the original of this FINAL ORDER was served this ____ day of October, 2014, by messenger mail, to:

TINA DRURY
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for filing; and a true copy was sent by certified mail return receipt requested to;

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