

# **KENTUCKY DEPARTMENT OF EDUCATION**

## **STAFF NOTE**

### **Action/Discussion Item:**

Consideration to place Menifee County School District under state management pursuant to KRS 158.170, KRS 158.785 and 703 KAR 3:205

### **Applicable Statute or Regulation:**

KRS 158.780, KRS 158.785, and 703 KAR 3:205

### **Action Question:**

Should the Kentucky Board of Education (KBE) designate the Menifee County School District as a state-managed district?

### **History/Background:**

***Existing Policy.*** KRS 158.780 and 158.785 require the KBE to establish a program for management improvement services for school districts that demonstrate such a critical lack of efficiency or effectiveness in governance or administration that state mandated corrective action or state control of the district is required. 703 KAR 3:205 establishes the management improvement program and describes the management audit process.

703 KAR 3:205 explains that if a review of the data routinely submitted by school districts indicates significant deficiencies in a school district, Kentucky Department of Education (KDE) staff will conduct an on-site review. The on-site review includes the examination of local school records and interviews with school district officials, school district staff, and community leaders. The on-site review may include an examination of school district operations in:

- (a) Governance policy and procedures;
- (b) Instructional programming and organization;
- (c) Fiscal management and accountability procedures;
- (d) The maintenance and condition of the physical plant;
- (e) Facility construction;
- (f) Student transportation; and
- (g) Community perception and support.

If the data review and school district investigation reveal significant deficiencies, the commissioner of education must determine whether the significant deficiencies indicate the presence of critically ineffective or inefficient management; if so, the commissioner must order a management audit.

The comprehensive management audit must include an investigation of the district's compliance with state and federal statutes, administrative regulations and local board policies. The audit must include an on-site review, investigation, and analysis of the governance and administration of the school district to determine if a significant lack of a pattern of efficiency and effectiveness exists in the following areas: Planning; Operational support; Fiscal management; Personnel administration; and Instructional management. Deficiencies identified and established in some or all of these areas may constitute a pattern of a significant lack of effectiveness and efficiency in the governance and administration of the school district. Following the comprehensive audit, KDE staff prepares a report and the commissioner must determine if there exists a pattern of a significant lack of effectiveness and efficiency in the governance or administration of the school district.

If the commissioner determines that the comprehensive audit establishes an existing pattern of a significant lack of effectiveness and efficiency and state assistance is necessary to correct the inefficiencies and ineffectiveness, the commissioner must place a recommendation to declare the district "state-assisted" before the Kentucky Board of Education. After the completion of a comprehensive management audit, and the prescribed review, the commissioner recommended that the Menifee County School District be designated as a state-assisted district.

The district had the right to appeal that recommendation, and also had the right to a full evidentiary hearing. However, on November 20, 2014, the Menifee County Board of Education voted unanimously to accept state assistance. By that vote, the Menifee County Board of Education acknowledged that there were no issues of material fact that required a hearing.

The designation of "state-assisted" meant that KDE was required to help the local district develop and implement a plan to correct the deficiencies identified in the audit. KDE also was required to monitor compliance with this plan. KDE's monitoring revealed that the plan has not been adequately developed or implemented, and the commissioner has recommended that the Menifee County School District be designated as a state-managed district.

Specific findings are summarized below:

**(A) Planning** – Evidence from the audit established a failure to develop, adopt, and implement planning processes that allow for public review and timely action by the board and administration regarding management of the administrative and business activities of the school district and of the management of the instructional program. See 703 KAR 3:205(2) (2) (a).

Despite state assistance, the perception of a divide between those who previously supported the former superintendent and those who support the present superintendent has persisted. There remains a palpable fear that jobs are on the line, every day, based upon which side of the divide an employee is perceived to fall.

**(B) Operational Support** – Evidence from the audit established the failure of the district to maintain school building cleanliness and safety.

The district is required to employ maintenance and operations staff who provide clean and safe school buildings. See 703 KAR 3:205(2) (2) (1) (c). The audit found that the district had only one maintenance person. Despite state assistance, the district has made no changes in response to this audit finding.

The audit noted a failure to budget and expend funds necessary to maintain the physical plant. See 703 KAR 3:205(2) (2) (1) (b). The audit noted that Menifee Elementary had significant roof issues, and that audit team members noted what appeared to be mold and experienced respiratory discomfort while in the building. Despite state assistance, the roof issues at Menifee Elementary have not been addressed.

The audit noted that the district's bonding potential was depleted by construction projects, leaving only \$1,130,000 in bonding potential, with the majority of that amount derived from outstanding offers from the School Facilities Construction Commission. Despite state assistance, the district's bonding potential has not improved.

The audit found that the "Old Botts School" was used primarily for community events. These events were scheduled by a five-member committee comprised of one board member and four community members. Every committee member had a key to the building. The school district owned the building and maintained it, resulting in additional cost to the district for utilities, insurance, and lawn care. The audit raised the concern that, without a school employee present at events, potential insurance claims could be denied. Despite state assistance, the district has not addressed issues regarding the Old Botts School.

The audit revealed the district's failure to maintain and operate a transportation system, including a failure to purchase and maintain equipment to safely and efficiently transport children to school. See 703 KAR 3:205(2) (2) (3) (c). KDE recommended one full-time mechanic to service the district's 23 buses. The audit found that the district's mechanic performed mechanic work for 6 hours per day and drove a bus for 2 hours per day during the school term. The audit also found that the district did not have a physical bus garage, bus shelter, or bus lift. Despite state assistance, the district has not addressed any of these concerns.

**(C) Fiscal management** – The audit revealed the district's failure to perform the appropriate planning, budgeting, fund management, and accounting responsibilities required for the fiscal management of the school district, including a failure to assess the need for expenditures. See 703 KAR 3:205(2) (2) (c) (1). Also, see 703 KAR 3:205(2) (2) (c) (2).

At the time of the audit, the district employed two contracted finance staff. Those employees (from a neighboring district) were utilized on an as-needed basis. Neither the district finance officer nor the superintendent participated in budget development. The

FY 15 working budget was developed solely by the contracted finance staff. The audit noted that the superintendent received no information from the finance officer regarding the financial condition of the board or the bank balance. Despite state assistance, the district has not improved its fiscal management capacity, and continues to rely on contracted finance staff, and not upon district finance staff.

The audit noted that no oral presentations were made at local board meetings regarding financial information, and that there was evidence the board members did not understand the reports produced by the financial management system (MUNIS). The audit noted that requests for off-system schedules were made and that off-system reports were error-prone and might not align with the information contained in MUNIS. Despite state assistance, the district has not improved its capacity to use the financial management system.

The audit discovered evidence that the lack of capacity in the finance office has resulted in worker status misclassification. For example, two individuals from a neighboring district were being paid through accounts payable instead of through payroll as Internal Revenue Service guidance would require. Consequently, the individuals were not being given proper service credit through their appropriate state retirement system, nor was the district funding the employer matching retirement contribution. Despite state assistance, these problems persist.

**(D) Personnel administration** – The audit established the district’s failure to ensure that school district staff were prepared to perform required professional and staff responsibilities in an effective and efficient manner. See 703 KAR 3:205(2) (2) (d).

The audit revealed the district’s failure to develop and implement employment practices and procedures that ensure the selection and placement of the most qualified personnel. See 703 KAR 3:205(2) (2) (d) (1). There was evidence that individuals were hired for positions for which they did not possess the qualifications or certifications required. Despite state assistance, these issues have persisted.

The audit revealed a failure to train and evaluate the professional staff of the district as required by applicable laws. See 703 KAR 3:205(2) (2) (d) (2). There was no evidence of finance officer training. There was no evidence of training of the person responsible for human resources. There was not a consistent and transparent process for reviewing positions. Despite state assistance, these issues have largely persisted, although finance officer training was completed in May 2015.

**(E) Instructional management** – The audit established a failure to develop and maintain district-level instructional policy. See 703 KAR 3:205(2) (2) (e).

The audit team found little evidence of a systematic process for using student data to inform curriculum and instruction. Despite state assistance, instructional management problems have persisted.

Unfortunately, the district consistently and persistently mischaracterized and distorted the guidance that KDE has provided. For example, on January 28, 2015, the superintendent wrote to “[p]arents, [s]tudents, [t]eachers and [c]ommunity [m]embers” to report that he had been “. . . informed that should KDE take over Menifee County Schools, Botts Elementary School would be closed immediately.” This statement was false on January 28, 2015 and is false now. More troubling, perhaps, is the fact that the district issued this communication without consulting the KDE staff providing assistance, or even advising KDE staff that the communication was planned. By taking this step, the district not only mischaracterized state assistance, but fostered fear and misunderstanding in the district.

The January 28, 2015, communication also raised the specter of forced consolidation of the district with a neighboring district, and speculated that the district might be consolidated with the Rowan, Morgan, or Bath County Schools. Forced consolidation was not possible on January 28, 2015 and is not possible now. However, a district school board member contacted KDE staff to inquire whether the district would be merged with another district, in the event of state management. That inquiry appears to have resulted, exclusively, from misinformation disseminated to the entire school community by the district.

Since the designation, without objection, of the district as “state-assisted,” KDE has provided, in addition to other support, an educational recovery director and a state assistance monitor. KDE personnel have been in the district (or provided targeted support to the district) on the following dates:

January 22 and 29, 2015;  
February 6, 16, 23, 24, 25, and 26, 2015;  
March 2, 4, 10, 12, 19, 21, 23, 24, 25, and 26, 2015;  
April 1, 2, 6, 8, 9, 13, 14, 15, 16, 27, 28, and 29, 2015; and  
May 4, 12, 13, 14, 17, 20, 21, and 26, 2015.

This support has included meetings with central office staff, meeting with the Menifee County Teachers Association, a meeting regarding SBDM procedures, board meeting attendance, internal reviews of the schools, and attending trainings with district administrators. KDE staff have been to the district to assist with attendance and scheduling issues. KDE staff also have arranged a two-day professional development activity for all teachers in the district, to be held on July 30-31, 2015. This list does not include phone and e-mail communications. As detailed above, the district has steadfastly resisted and mischaracterized this assistance.

In the months preceding the designation of the district as “state-assisted,” KDE provided targeted financial support to the district on the following dates:

May 2, 5, 23, and 30, 2014;  
June 2 and 6, 2014;  
August 20, 27, and 28, 2014; and  
September 10, 12, 15, 16, 17, 22, and 23, 2014.

On June 3, 2015, the commissioner wrote to the superintendent and board chair of the Menifee County School District and shared the recommendation that the district be designated a state-managed district. The commissioner attached a copy of the final report regarding the state management recommendation, along with the transmittal letter to the chair of the KBE. The commissioner explained that, if the KBE designates a district as a state-managed district, the commissioner, or the commissioner's designee exercises all administrative, operational, financial, personnel, and instructional aspects of the management of the school district formerly exercised by the local school board and the superintendent.

The commissioner explained that, in a "state-managed" school district, any local school board member or the local superintendent may be removed from office by the KBE pursuant to KRS 156.132.

The commissioner also explained that, in a "state-managed" school district, the commissioner makes administrative appointments as necessary to exercise full and complete control of all aspects of the management of the district, and retains clear supervisory and monitoring powers over the operation and management of the district.

The commissioner also explained that a school district designated as a state-managed district maintains that designation until the KBE determines that the pattern of ineffective and inefficient governance or administration and the specific deficiencies determined by the management audit have been corrected.

The commissioner explained that the district has the right to appeal this recommendation to the KBE, and that the district has the right to a full evidentiary hearing, administered by a hearing officer, before the KBE.

The Menifee County Board of Education met in a public meeting on June 18, 2015 and voted, in the open session of that public meeting, that it did not want to pursue an appeal before the KBE, that it does not believe there are genuine issues of material fact requiring a full evidentiary hearing before the KBE to contest the commissioner's recommendation, and that the district does not want to participate in a hearing before the KBE.

**Staff Recommendation(s) and Rationale(s):**

Staff recommends that the KBE designate the Menifee County School District as a state-managed district pursuant to KRS 158.780, KRS 158.785, and 703 KAR 3:205. The many reasons for this recommendation are specified above. Also, the designation of the Menifee County School District as a state-managed district will permit the KDE to immediately provide resources to the district to improve college and career readiness.

**Impact on Getting to Proficiency:**

Districts with the types of issues described in this staff note must have intense assistance to correct the problems and get back on track toward proficiency.

**Groups Consulted and Brief Summary of Responses:**

The Menifee County Board of Education voted on June 18, 2015, in a public meeting and by a vote of 3-0, to accept and not contest the recommendation that the district be designated a state-managed district.

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Commissioner of Education

**Date:**

July 10, 2015