



Bullitt County Public Schools

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July 26, 2021
Regular Business Meeting
Bullitt County Board of Education

RESOLUTION IN SUPPORT OF THE COUNCIL FOR BETTER EDUCATION

IT IS HEREBY RESOLVED that the Bullitt County Board of Education authorizes Superintendent. Dr. Jesse Bacon, to take all necessary steps to support the Council for Better Education, Inc. ("CBE"), in its legal challenge to the unconstitutionality of the tax credits in House Bill 563, including the payment of any appropriate dues or assessments related to this school district's membership in CBE or its support of the referenced legal challenge.

Adopted on July 26, 2021 by the Bullitt County Board of Education.


Deborah Atherton
Board Chair


Dr. Jesse Bacon
Superintendent



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Louisville, KY 40202
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MEMORANDUM

TO: Matt Robbins and Tom Shelton
CC: Byron Leet, Mitzi Wyrick and Sean Williamson
FROM: Wyatt Tarrant & Combs LLP
DATE: July 13, 2021
RE: Summary of *Council for Better Education, et al v. Holly M. Johnson, in her official capacity as Secretary of Kentucky Finance and Administration Cabinet, et al* as of July 12, 2021

I. HB 563 Implementation. The Finance Cabinet filed an affidavit on July 2, 2021 stating that HB 563 will not be fully implemented — no AGO could possibly be approved — before October 11, 2021.

II. Court Ordered Scheduling. The Court concluded a zoom pretrial conference on July 7, 2021 and entered an order as follows:

A. The Court desires a bench trial to hear evidence on how HB 563 will be implemented, its impact on the funding of common schools under the SEEK program and its impact on the legislature's constitutional duty to provide for an efficient system of common schools under Ky. Const. § 183.

B. The Court ordered the parties to meet and confer to develop stipulations of agreed facts, which must be filed by August 2, 2021. If certain facts cannot be stipulated, the parties must by the same date identify areas of factual dispute.

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C. The Court ordered the parties to address all relevant factual issues in the stipulation, including the impact, if any, that \$25 million in tax credits per year will have on the public schools and on SEEK funding for public schools.

D. The Court set a briefing schedule for summary judgment motions:

- 1.** Any party or intervenor may file a dispositive motion by August 9, 2021;
- 2.** Responses to those motions are due by August 23, 2021; and
- 3.** Replies to responses shall be filed by August 30, 2021.

E. The Court will hear oral argument on the motions on September 16, 2021 at 2:00 p.m.

F. If the Court determines that issues of fact exist after the hearing on the dispositive motions, the Court will schedule a bench trial.

G. The Court ordered that our motion for injunctive relief is withdrawn without prejudice. The Department of Revenue must give the Court and all parties 20 days advance notice of any preliminary approval of an AGO. We then have five days from the Department's notice to renew our motion for temporary injunction.

A Brief History of the Council for Better Education (CBE)

By Tom Shelton and Blake Haselton

The Council for Better Education (CBE), formed in 1984, was started by a group of 28 superintendents from property-poor districts and other education advocates who were fed up with the legislature's failure to fund the state's schools and were considering suing the General Assembly. To participate in the suit, local school boards had to vote and agree to pay 50 cents per student to cover legal costs. Thirty-eight additional districts joined, and the 66 combined districts brought the lawsuit, in 1985 that culminated in the historic CBE v. Wilkinson ruling on Kentucky's constitutional education obligations.

The case was litigated in Franklin Circuit Court for more than two years with superintendents and students testifying about the conditions at their schools. The attorney for the General Assembly accused the school boards of not levying all permissible taxes and superintendents of mismanagement. Circuit Judge Ray Corns issued his decision declaring the state school system unconstitutional in May 1988.

While the Court stopped short of ordering specific education reforms, deferring instead to the legislative process in the first instance, it did provide the legislature with broad guidelines about what constitutes an adequate education. Those guidelines defined an adequate education as one that provides students with the opportunity to develop at least the seven capabilities in KRS 158.645.

The decision was ultimately upheld in 1989 by the State Supreme Court and the decision (*Rose v. CBE*) forced the legislature to act and in the next regular session the General Assembly passed the historic Kentucky Education Reform Act (KERA) in 1990, which created a school finance formula (SEEK) designed to more equitably fund the state's public schools.

The court's direction also set a standard for the definition of adequacy in funding. After years of review and study beginning around 1997, CBE tested this legal definition in 2004 in litigation challenging adequate funding from the General Assembly in order for all districts (students) to reach proficiency by 2014 as prescribed by KERA. However, in 2007, Circuit Judge Thomas Wingate found that although funding was not at an optimal level, it was not so inadequate to justify intervention into the role and responsibility of the legislature. However, Judge Wingate left the door open for additional litigation if the state of adequacy declined even further.

When the state's assessment of student achievement, the Commonwealth Accountability Testing System (CATS), was replaced by the Kentucky General Assembly, the measure (CATS) that had been utilized to determine proficiency for all students was no longer available. This change led CBE to determine the need for a new evidence-based study in order to determine the cost of adequacy in funding. CBE hired Picus Odden and Associates to produce the Adequacy for Excellence in Kentucky report in 2014.

This study found that over the past decade, Kentucky has consistently funded its schools below national averages, but funding levels have shown varied results against comparable states. Kentucky's teacher salaries have consistently been below national averages over the past decade. Kentucky's educational outcomes have generally been mixed when compared to both national averages and comparable states. Since 2014, CBE has continued in existence in order to monitor adequacy and equity in funding and to track legislation passed by the General Assembly that impacts the financial condition of Kentucky schools.

2021-22 CBE Assessment

District	FY 19 ADA Assessment		0.5
001 Adair County	2,382.56	1,191.28	
005 Allen County	2,703.48	1,351.74	
006 Anchorage Independent	360.431	180.22	
011 Anderson County	3,237.37	1,618.69	
012 Ashland Independent	2,930.19	1,465.10	
013 Augusta Independent	261.379	130.69	
015 Ballard County	1,069.56	534.78	
016 Barbourville Independent	577.564	288.78	
017 Bardstown Independent	2,303.43	1,151.72	
021 Barren County	4,400.23	2,200.12	
025 Bath County	1,778.56	889.28	
026 Beechwood Independent	1,330.24	665.12	
031 Bell County	2,347.52	1,173.76	
032 Bellevue Independent	562.726	281.36	
034 Berea Independent	998.01	499.01	
035 Boone County	18,930.29	9,465.15	
041 Bourbon County	2,466.34	1,233.17	
042 Bowling Green Independent	4,006.73	2,003.37	
045 Boyd County	2,658.07	1,329.04	
051 Boyle County	2,465.02	1,232.51	
055 Bracken County	1,134.18	567.09	
061 Breathitt County	1,658.10	829.05	
065 Breckinridge County	2,309.32	1,154.66	
071 Bullitt County	11,952.16	5,976.08	
072 Burgin Independent	456.957	228.48	
075 Butler County	1,995.12	997.56	
081 Caldwell County	1,768.00	884.00	
085 Calloway County	2,723.96	1,361.98	
091 Campbell County	4,522.54	2,261.27	
092 Campbellsville Independent	1,002.77	501.39	
095 Carlisle County	659.748	329.87	
101 Carroll County	1,698.99	849.50	
105 Carter County	3,866.94	1,933.47	
111 Casey County	2,074.47	1,037.24	
113 Caverna Independent	552.437	276.22	
115 Christian County	7,783.55	3,891.78	
121 Clark County	4,817.15	2,408.58	

125 Clay County	2,625.94	1,312.97
131 Clinton County	1,485.87	742.94
132 Cloverport Independent	319.312	159.66
133 Corbin Independent	2,687.63	1,343.82
134 Covington Independent	3,346.27	1,673.14
135 Crittenden County	1,202.20	601.10
141 Cumberland County	803.914	401.96
143 Danville Independent	1,723.37	861.69
145 Daviess County	10,198.85	5,099.43
146 Dawson Springs Independent	563.029	281.51
147 Dayton Independent	837.368	418.68
149 East Bernstadt Independent	452.2	226.10
151 Edmonson County	1,631.66	815.83
152 Elizabethtown Independent	2,246.59	1,123.30
155 Elliott County	902.975	451.49
156 Eminence Independent	815.201	407.60
157 Erlanger-Elsmere Independent	2,259.66	1,129.83
161 Estill County	2,064.11	1,032.06
162 Fairview Independent	623.795	311.90
165 Fayette County	38,146.26	19,073.13
171 Fleming County	2,023.71	1,011.86
175 Floyd County	5,097.80	2,548.90
176 Fort Thomas Independent	2,958.98	1,479.49
177 Frankfort Independent	751.992	376.00
181 Franklin County	5,722.14	2,861.07
185 Fulton County	535.187	267.59
186 Fulton Independent	294.342	147.17
191 Gallatin County	1,338.03	669.02
195 Garrard County	2,301.82	1,150.91
197 Glasgow Independent	2,055.73	1,027.87
201 Grant County	3,166.84	1,583.42
205 Graves County	3,800.90	1,900.45
211 Grayson County	3,766.80	1,883.40
215 Green County	1,441.69	720.85
221 Greenup County	2,515.46	1,257.73
225 Hancock County	1,507.02	753.51
231 Hardin County	13,275.81	6,637.91
235 Harlan County	3,166.84	1,583.42
236 Harlan Independent	596.16	298.08
241 Harrison County	2,596.32	1,298.16

245 Hart County	2,023.80	1,011.90
246 Hazard Independent	885.083	442.54
251 Henderson County	6,458.82	3,229.41
255 Henry County	1,931.92	965.96
261 Hickman County	649.878	324.94
265 Hopkins County	5,932.62	2,966.31
271 Jackson County	1,732.01	866.01
272 Jackson Independent	295.638	147.82
275 Jefferson County	87,498.81	43,749.41
276 Jenkins Independent	362.269	181.13
281 Jessamine County	7,426.36	3,713.18
285 Johnson County	2,926.25	1,463.13
291 Kenton County	13,138.77	6,569.39
295 Knott County	1,856.02	928.01
301 Knox County	3,581.93	1,790.97
305 LaRue County	2,193.20	1,096.60
311 Laurel County	8,092.13	4,046.07
315 Lawrence County	2,095.55	1,047.78
321 Lee County	810.5	405.25
325 Leslie County	1,442.36	721.18
331 Letcher County	2,704.47	1,352.24
335 Lewis County	1,906.44	953.22
341 Lincoln County	3,160.36	1,580.18
345 Livingston County	1,000.36	500.18
351 Logan County	3,112.98	1,556.49
354 Ludlow Independent	735.39	367.70
361 Lyon County	850.201	425.10
365 Madison County	10,509.42	5,254.71
371 Magoffin County	1,775.17	887.59
375 Marion County	2,841.54	1,420.77
381 Marshall County	4,205.02	2,102.51
385 Martin County	1,579.94	789.97
391 Mason County	2,244.27	1,122.14
392 Mayfield Independent	1,690.23	845.12
395 McCracken County	6,455.14	3,227.57
401 McCreary County	2,421.88	1,210.94
405 McLean County	1,294.46	647.23
411 Meade County	4,341.74	2,170.87
415 Menifee County	949.492	474.75
421 Mercer County	2,450.34	1,225.17

425 Metcalfe County	1,262.13	631.07
426 Middlesboro Independent	960.692	480.35
431 Monroe County	1,611.29	805.65
435 Montgomery County	3,999.91	1,999.96
441 Morgan County	1,789.31	894.66
445 Muhlenberg County	4,143.64	2,071.82
446 Murray Independent	1,552.30	776.15
451 Nelson County	3,979.10	1,989.55
452 Newport Independent	1,385.58	692.79
455 Nicholas County	947.986	473.99
461 Ohio County	3,758.99	1,879.50
465 Oldham County	11,771.24	5,885.62
471 Owen County	1,677.11	838.56
472 Owensboro Independent	4,422.83	2,211.42
475 Owsley County	566.014	283.01
476 Paducah Independent	2,712.30	1,356.15
477 Paintsville Independent	724.069	362.03
478 Paris Independent	609.816	304.91
481 Pendleton County	2,108.87	1,054.44
485 Perry County	3,412.43	1,706.22
491 Pike County	7,078.33	3,539.17
492 Pikeville Independent	1,118.37	559.19
493 Pineville Independent	509.577	254.79
495 Powell County	1,949.27	974.64
501 Pulaski County	7,468.00	3,734.00
502 Raceland Independent	958.83	479.42
505 Robertson County	381.574	190.79
511 Rockcastle County	2,472.18	1,236.09
515 Rowan County	2,983.72	1,491.86
521 Russell County	2,622.19	1,311.10
522 Russell Independent	2,101.16	1,050.58
523 Russellville Independent	899.712	449.86
524 Science Hill Independent	369.343	184.67
525 Scott County	8,330.70	4,165.35
531 Shelby County	6,363.02	3,181.51
533 Silver Grove Independent	165.823	82.91
535 Simpson County	2,703.88	1,351.94
536 Somerset Independent	1,491.62	745.81
537 Southgate Independent	171.276	85.64
541 Spencer County	2,787.61	1,393.81

545 Taylor County	2,358.20	1,179.10
551 Todd County	1,641.43	820.72
555 Trigg County	1,762.82	881.41
561 Trimble County	1,052.60	526.30
565 Union County	1,918.51	959.26
567 Walton Verona Independent	1,625.06	812.53
571 Warren County	14,989.55	7,494.78
575 Washington County	1,465.94	732.97
581 Wayne County	2,742.07	1,371.04
585 Webster County	1,912.70	956.35
586 West Point Independent	113.015	56.51
591 Whitley County	3,692.17	1,846.09
592 Williamsburg Independent	708.367	354.18
593 Williamstown Independent	726.777	363.39
595 Wolfe County	1,102.23	551.12
601 Woodford County	3,646.25	1,823.13

The Council for Better Education

The Council for Better Education represents 168 of Kentucky's 173 school districts in efforts to ensure full implementation of Kentucky's constitutional commitment to our students and our common schools.

TAXPAYERS, VOTERS, EDUCATORS CHALLENGE

Litigation argues HB 563 violates Kentucky Constitution

FRANKFORT, Kentucky (June 7, 2021) —The Council for Better Education, Inc., the Frankfort Independent School District, and Warren County School District, along with three individual taxpayers and voters, filed suit in Franklin Circuit Court today. The case challenges the constitutionality of HB 563, a school voucher program that — if it goes into effect as scheduled on June 28 — will funnel \$125 million in state revenue to private schools.

Every student, no matter what he looks like or where she lives, deserves access to a high-quality public education. Spending money on voucher programs means denying students the opportunities they deserve in their neighborhood public schools because vouchers steal away scarce funding from public schools and give it to private schools that have no accountability or transparency. The Kentucky constitution demands that public funds be used to improve public schools in Kentucky and prohibits public money being shifted to unaccountable private schools.

As our Supreme Court made clear in its landmark decision in *Rose v. Council for Better Education*, the General Assembly has an unyielding obligation to provide for and oversee an efficient system of common schools and cannot redirect public funds to private schools that serve a select few. The Constitution requires any programs that fund schools other than the common schools be approved by Kentucky voters.

HB 563 violates these constitutional requirements. Worse still, the law allows state revenue to flow to private schools that are not subject to any education standards and are free to discriminate against students for any reason, including race, gender, sexual orientation, disability and religion. Public dollars should never be spent to create an education system that allows, encourages or perpetuates discrimination.

HB 563 conceals its constitutional defects of funding tax handouts to wealthy donors and allowing private management organizations (in exchange for a generous fee) to administer the program rather than public agencies that are accountable to Kentucky voters. But make no mistake: left unchallenged, over the next five years HB 563 will cost the taxpayers of the Commonwealth \$125 million in revenue that should have gone to public education.

Contact: Dr. Tom Shelton, Executive Secretary tom.shelton13@gmail.com