

**WOODFORD COUNTY BOARD OF EDUCATION
AGENDA ITEM**

ITEM #: IX G DATE: August 12, 2021

TOPIC/TITLE: The Council for Better Education (CBE)

PRESENTER: Danny Adkins

ORIGIN:

- ☐ TOPIC PRESENTED FOR INFORMATION ONLY (No board action required.)
☒ ACTION REQUESTED AT THIS MEETING
☐ ITEM IS ON THE CONSENT AGENDA FOR APPROVAL
☐ ACTION REQUESTED AT FUTURE MEETING: (DATE)
☐ BOARD REVIEW REQUIRED BY

- ☐ STATE OR FEDERAL LAW OR REGULATION
☐ BOARD OF EDUCATION POLICY
☐ OTHER:

PREVIOUS REVIEW, DISCUSSION OR ACTION:

- ☐ NO PREVIOUS BOARD REVIEW, DISCUSSION OR ACTION
☐ PREVIOUS REVIEW OR ACTION

- ☐ DATE:
☐ ACTION:

BACKGROUND INFORMATION:

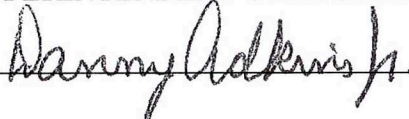
SUMMARY OF MAJOR ELEMENTS:

Approve resolution and membership dues/assessments for The Council for Better Education (CBE). CBE challenges the constitutionality of HB 563, a school voucher program that - if it goes into effect as scheduled - will funnel \$125 million in state revenue to private schools.

IMPACT ON RESOURCES:

TIMETABLE FOR FURTHER REVIEW OR ACTION:

SUPERINTENDENT'S RECOMMENDATION: ☐ Recommended ☐ Not Recommended



IT IS HEREBY RESOLVED that the Woodford County Board of Education authorizes Superintendent Danny Adkins 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.

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

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.

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.

WOODFORD COUNTY BOARD OF EDUCATION
Annual Volunteer Letter of Intent for 2018-2019
"REQUIRED TO KEEP BACKGROUND CHECK CURRENT"

Name: _____

SS# _____

Address: _____

School(s) _____

City, State, Zip: _____

Dear Volunteer,

*****The official volunteer background check paid by our district and required through the Administrative Office of the Courts (AOC) may now be good for 5 years. In each school year following the school year of the initial background check, this form will need to be completed prior to September 15th in order to keep your status as an approved volunteer current. Failure to complete the intent form prior to September 15th will require the submission of another background check at the parent's/guardian's expense.**

CHARACTER & FITNESS QUESTIONS

Answer the questions by circling YES or NO. (If you answered "YES" to any question, please attach a written explanation.)

- | | | |
|-----|----|--|
| YES | NO | Have you ever been convicted of a felony? |
| YES | NO | Have you ever been convicted of a misdemeanor involving a student or minor? |
| YES | NO | Have you ever been convicted of a misdemeanor involving controlled substances, assault, kidnapping, sexual offenses, abuse of public office, disorderly conduct, prostitution, family offenses or pornography? |
| YES | NO | Have you ever been dismissed, fired or discharged from a position of employment based on a claim of misconduct, unsatisfactory performance, incompetency or neglect of duty? |
| YES | NO | Have you ever had sexual contact with a student or minor? |
| YES | NO | Have you ever committed any act that constitutes fraudulent, corrupt, or immoral conduct? |
| YES | NO | Have you ever demonstrated willful/careless disregard for the health, welfare or safety of others? |
| YES | NO | Have you ever possessed or been under the influence of drugs/alcohol during the performance of duties? |
| YES | NO | Have you had child abuse or neglect substantiated against you by DCBS? |

CONFIDENTIALITY OVERVIEW

By signing below, I agree to the following contract made between myself and the Woodford County Schools:

1. I recognize that in my work as a volunteer for the Woodford County Schools I am exposed to classified and personal information that is not available to the general public;
2. I voluntarily place myself under an obligation to maintain confidentiality in all my relationships with anyone whom I work with through the Woodford County Schools.
3. I pledge to keep any information passed on to me about students in the Woodford County Schools confidential.

Volunteer Signature

Date

Sincerely,

Danny Adkins, Superintendent

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Council for Better Education

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

C/O Patricia Sheffer, Union Co Public Schools, 4500 US Hwy 60 W

6 City, state, and ZIP code

Morganfield KY 42437

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

- -

or

Employer identification number

3 2 - 0 2 2 2 0 3 6

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Tom Shelton

Date ►

7/14/2021

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.