

Dear Superintendents,

I trust your New Year is off to a great start! I wish each one of you a prosperous and happy 2023!

The Council for Better Education (CBE) remains actively committed to protecting public funds for our public schools students. On December 15, 2022, we all learned that the Kentucky Supreme Court handed us an enormous victory, by a 7-0 margin, in the private school voucher case. This victory was not only significant for the unconstitutional law that was passed by the General Assembly, it significantly deters future bills that would attempt to accomplish the same objective. Kentucky is one of about sixteen states that has a highly restrictive constitution that limits public school funds for public school purposes only. Furthermore, the judicial precedent is overwhelmingly strong on this topic, including this most recent decision. However, it is significant to mention that CBE advised districts that the “open boundaries” section of HB 563 was not a contention in our lawsuit and thus, was unimpacted in the Court’s final decision. As we stated many times, the open boundaries section was not a constitutional issue and thus, was not legally challenged.

As we stated at the KASS Conference, we have anticipated initiating another lawsuit that challenges the unconstitutionality of HB 9, a charter school funding law that was passed by the General Assembly in the 2022 session last year. On Friday, January 6, our CBE lawsuit was officially filed in Franklin Circuit Court. This will begin this process that very likely will be decided again by the Kentucky Supreme Court. Our lawsuit specifically cites ten sections of Kentucky’s Constitution that we believe HB 9 violates.

HB 9 is problematic on a number of fronts, both now, and also what this portends into the future. If the evidence of other states are evidentiary, and they are, the expansion of current law is easily changed by the stroke of a pen. This means that arbitrary language today can and likely will be amended and changed tomorrow once the “camel gets his nose in the tent”. At the least, we are all immediately impacted by state and local SEEK funds being taken from our public schools. Once funds leave public education under this purpose, it is highly unlikely they will ever return.

Quickly, I’d like to highlight the significant problems with HB 9. First, HB 9 targets twelve school districts in Northern Kentucky and Jefferson County for pilot charter schools that enable outside authorities and/or agencies to authorize a charter school. The law would also require state SEEK and local property taxes collected from those school districts to fund the charter school, all without local school board consent or governance. Second, the law creates a completely arbitrary district size of 7,500 or more students who are also impacted by HB 9, impacting an additional sixteen Kentucky school districts. In this specific instance, if a local school board chooses to deny the charter application, it may be appealed to KDE and providing the application is complete, with minimum legal requirements, KDE would be legally obligated to approve and overrule the local school board’s decision. Once again, state SEEK funds and local school property taxes collected for the school district’s students must follow the student, regardless of the local school board’s consent. Those districts less than the arbitrary 7,500 students are permitted to maintain local decision making authority to approve or deny the application without appeal. I reiterate the point that the 7,500 number is completely arbitrary, which means if the local board’s autonomy can be stripped away, the number can be easily changed tomorrow. It is the loss of autonomy that is of grave concern to all Kentucky districts alike. This is truly a “one for all and all for one” moment once again in our history. Quite simply, HB 9 creates another system of schools other than the “common schools” required by Ky’s Constitution and requires school boards to largely pay the bill, all the while removing local school board authority, autonomy, and governance over the charter school in their district.

What action do you need to take now? The answer to this question is nothing at the moment, except you should consider some level of communication with your respective board. CBE will be preparing an “assessment invoice” to be sent to each district in late January/early February 2023. Assessments will be based on \$1 per ADA, using the 2018-19 ADA that was also used in our prior assessment. The assessment is 100% dedicated towards legal and related consulting expenses. We have zero administrative costs as all of our CBE directors are volunteer superintendents. We only conduct an assessment for a specific, non-recurring purpose. Further, we will also provide you with a sample board resolution for you to gain local board approval. We will also provide you with a “talking points” document that provides essential information to serve as an aid or guide when having necessary conversations with your board.

Last, I thank you for your continued support and advocacy through the Council for Better Education. CBE is a non profit corporation created in the 1980's for the exact purpose described herein. The education of Kentucky's children and youth is a serious and sobering subject. You and your board's decision on this subject will have a profound impact on the short-term and long-term future of our most precious asset - the Commonwealth's Kids!

Respectfully,

Matt Robbins, President
Council for Better Education (CBE)

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