

# **2018 OEA Annual Report**

KRS 7.410(2)(c)(8) requires the Office of Education Accountability (OEA) to prepare an annual report of the status and results of the annual research agenda and a summary of completed investigative activity to the Education Assessment and Accountability Review Subcommittee (EAARS).

## **Chapter 1**

### **Investigations**

Since 1990, under KRS 7.410(2)(4) and through an Investigations Division, OEA has carried out investigative duties. A division manager oversees all investigations. The division has five full-time and two part-time investigators.

OEA investigates a broad range of allegations, but some (such as board member interference in district personnel matters and issues related to hiring) are more common.

OEA conducts investigations after receiving written complaints. Complaints are submitted by mail, email, and phone calls to a toll-free hotline. With the help of the Office of Computing and Information Technology (OCIT), OEA maintains an online complaint form. While staff confer with individuals regarding many issues, any matter to be investigated must be put into writing. Each complainant is asked to provide as much written information about the alleged wrongdoing as possible.

Complaints come from sources including state agencies, local school board members, superintendents, principals, teachers, classified and certified employees, parents, and citizens. Often, the complainants identify themselves and provide sufficient information to allow investigators to discuss the allegations. Some complainants request confidentiality, and others are anonymous.

Although the number of complaints fluctuates over time, OEA receives daily communications expressing concerns or seeking information about local and state educational issues. Few communications result in an investigation. Frequently, OEA renders assistance by telephone or email. Resolution may require only helping the individual get in touch with the appropriate state or local authority. OEA staff attempts to resolve concerns without the filing of a formal complaint.

Often, though, the communication contains an allegation that Kentucky education law has been violated, and the complainant requests more involved participation or intervention by OEA. OEA requires a written complaint before an investigation will be initiated, but if the original contact is made by regular mail or email, that writing may suffice unless additional detail is needed.

OEA received 584 written complaints in 2018 (385 of these were anonymous). In 2017, OEA received 457 written complaints. Throughout the year, OEA reports to EAARS, as required by statute, an ongoing summary of the cases under investigation. Table 1.1 summarizes the investigative work conducted by staff during 2018.

**Table 1.1**  
**2018 Investigations**

|                      | <b>Opened</b> | <b>Closed</b> | <b>Pending</b> |
|----------------------|---------------|---------------|----------------|
| <b>Investigative</b> | 40            | 23            | 51             |
| <b>SBDM</b>          | 13            | 9             | 14             |
| <b>Total</b>         | 53            | 32            | 65             |

**Statutory Duty To Investigate**

KRS 7.410(2)(c)4 requires that OEA:

- Investigate allegations of wrongdoing of any person or agency, including but not limited to allegations of waste, duplication, mismanagement, political influence, and illegal activity at the state, regional, or school district level;
- Make appropriate referrals to other agencies with jurisdiction over those allegations.

For example:

KRS 620.030 requires that suspected child dependency, neglect, or abuse be immediately reported to the appropriate authorities;

Under KRS 156.132, the commissioner of education and the KBE are empowered to discipline, suspend, and remove district personnel and board members under sufficiently serious circumstances;

A local board member who is ineligible for office under KRS 160.180 due to such violations as nepotism, conflict of interest, or holding incompatible offices may be referred to the Office of the Attorney General for possible removal under KRS 415.050 and KRS 415.060; and

OEA may refer a certified employee, such as a teacher or administrator, to the EPSB for possible disciplinary action and revocation of certification under KRS 161.120.

- Make recommendations for legislative action to EAARS. Upon approval of EAARS, recommendations for legislative action shall be forwarded to the Legislative Research Commission (LRC); and
- Submit to EAARS, for each of its regular meetings, a report that summarizes investigative activity. The subcommittee may consider each report as it determines and in its discretion. Each report, and the consideration thereof by EAARS, is exempt from the open records and open meetings requirements contained in KRS Chapter 61.

KRS 7.410(2)(g) states that any state agency that receives a complaint or information which if accurate may indicate a violation of the Kentucky Education Reform Act (KERA) is required to forward that complaint or information to OEA. This provision makes OEA a state clearinghouse for education-related complaints. However, Sections 27 and 28 of Kentucky's Constitution separate the powers of the legislative branch (including OEA) and of the executive branch (the KBE, KDE, and EPSB.) Enforcement of the laws is an executive function.

KRS 7.420 requires that as part of any investigation pursuant to KRS 7.410, OEA must attempt to gather all relevant information before reaching conclusions or making public any findings. This must include providing the opportunity for the subject school district, agency, or individual to provide responsive information.

KRS 160.345(9)(b) provides that an affected party who believes a violation regarding school-based decision making has occurred may file a written complaint with OEA. OEA must investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education (KBE).

### **Receipt and Review of Complaints**

A written complaint is necessary to ensure that there is a reliable record of the issues that OEA is being asked to investigate. Once an issue is reduced to writing, OEA staff evaluate the situation before becoming involved. Part of the evaluation process requires a review of OEA files for any prior related cases or complaints. Staff can also compare the complaint to past communications that were received and evaluated, but determined to be insufficient to independently justify an investigation.

OEA decides whether an allegation warrants inquiry or investigation only after reviewing and considering several factors, such as

- Seriousness of situation alleged
- Specificity of the information provided

- Whether the complainant has firsthand knowledge or is instead repeating rumor or hearsay
- Whether there are other or similar complaints regarding the same issues in the same district
- Possible outcomes and possible corrective action
- Ability to prove the facts alleged
- Whether the allegation falls within the jurisdiction of another agency or organization
- Availability of willing witnesses

Past investigations have revealed a concern of complainants that they or someone close to them will suffer retaliation or negative repercussions if it is known that they provided information to OEA. The identity of the complainant is therefore shielded. However, it is not possible to guarantee confidentiality. Frequently, especially if the complaint is focused on a specific situation and the complainant has addressed the situation with the district previously, the source of the complaint may be quite obvious. However, under no circumstance does OEA staff release or verify the source of a complaint. Just as other investigative agencies rely on anonymous information and tips about violations of law and protect the identity of sources, OEA believes that the use of anonymously provided information and the protection against disclosure of a complainant's identity are worthwhile and necessary practices.

Preserving the confidentiality of sources is consistent with and contemplated by OEA's enabling legislation. KRS 7.410(3) provides that OEA investigations, records, and work products are privileged and confidential during the course of an investigation and until released by OEA. The Kentucky Office of the Attorney General has concluded that OEA has "virtually unfettered discretion" in maintaining confidentiality under this statute. OAG 98-ORD-149. KRS 7.410(3) provides the authorization for maintaining the confidentiality of sources and information. OEA exercises its statutory discretion and releases final versions of its investigative reports. However, OEA does not release the sources of complaints or other records.

### **Declining or Referring Complaints**

The manager of the OEA Investigations Division receives and reviews complaints, and helps to determine the scope of OEA involvement. OEA considers the subject and content of the complaint to determine what action may be required.

OEA may choose to not open an investigation. Such a decision may be based on the conclusion that the complainant is unreliable, that the issue would be more appropriately reviewed by another agency, or that the facts in the complaint are vague

or do not state a violation of law. If contact information has been provided, OEA notifies the complainant that no further action will be taken on the matter, but OEA keeps the complaint.

If the facts recited in the complaint support a claim of violations of the law but the allegation is more appropriately handled by another agency, OEA contacts the complainant (if possible) and refers them to the appropriate authority or requests permission to forward the complaint. Several situations generally require an automatic transfer:

- Concerns over accountability testing violations are referred to the Kentucky Department of Education (KDE) under KRS 158.6453.
- Special education issues are usually referred to KDE, as its Division of Learning Services is better suited to deal with such matters. KDE facilitates three separate processes (mediation; a formal written complaint; or a due process hearing) that may resolve special education disputes.
- Allegations of discrimination based on race, gender, or disability status are usually referred to the Kentucky Commission on Human Rights or the United States Office of Civil Rights.
- Complaints of violations of the state's open meetings and open records laws are often referred to the Kentucky Office of the Attorney General per KRS 61.800 through 61.884.
- Charges of criminal activity are usually referred to an appropriate law enforcement agency, such as local police, county sheriff, Kentucky State Police, or the Office of the Attorney General.
- Complaints of fiscal misconduct may be referred to the Kentucky State Auditor.
- KRS 620.030 requires that suspected child dependency, neglect, or abuse be immediately reported to the appropriate authorities. OEA does not interview students, and would not normally acquire firsthand knowledge of suspected mistreatment of a child.

On occasion, an allegation that is referred to another agency may be intertwined with educational concerns that OEA would normally address. In such an instance, OEA may conduct inquiry into the education-related topic and refer the remainder of the issue to the appropriate agency.

Occasionally, OEA receives a complaint addressing a matter that is already under consideration by another agency. If an agency with jurisdiction over the matter is taking action, OEA usually declines to open a case or will open a file to monitor (but not actively investigate) the matter addressed by the other agency. This practice prevents the duplication of effort and waste of taxpayer dollars that can occur when two

organizations perform the same work. For example, if OEA receives a complaint regarding a certified educator who is already subject to an inquiry by the Education Professional Standards Board (EPSB) on the same issue, OEA would decline to open a case. OEA also avoids participation in matters that are being investigated by law enforcement, so as not to duplicate effort and to avoid interfering with an ongoing criminal investigation.

Finally, OEA will refer a complaint to the local superintendent or principal if the issue appears best handled by the local district. At times, OEA may request that a district superintendent look into a complaint, deal with the matter in the superintendent's sound discretion, and advise OEA after the matter is resolved at the local level. In such an instance the facts, except the identity of the complainant, are forwarded to the district.

Sometimes OEA is contacted by a complainant who has a lawyer and is about to file or has filed a lawsuit regarding the subject matter of the complaint. OEA declines to become involved when litigation is underway. Whatever OEA might do by way of resolution in such a case would be overridden by the decision of a judge, jury, or administrative body. OEA does not investigate or resolve matters for the benefit of litigants.

OEA also declines to open a case if the complainant is seriously contemplating litigation. If legal action appears imminent, OEA avoids the matter for the same reasons it declines involvement when litigation is already underway. Sometimes a complainant will be represented by a lawyer who is guiding the complainant through the resolution of the complaint, but litigation is not contemplated. In those circumstances, OEA may open a case, since litigation is not planned and does not seem likely. There is no way to guarantee that any given complainant will not file a lawsuit after an OEA inquiry, but OEA attempts to stay out of matters that are, or appear to be, headed for court.

OEA also refrains from involvement if various other formal proceedings, short of a lawsuit, are pending. For example, if a grievance is pending in the school district, OEA does not open a case. Appropriate review of the matter will occur through that proceeding.

### **Opening and Investigating a Case**

Formal cases are opened as either a "school-based decision making (SBDM)" matter, which deals with issues associated with KRS 160.345, or an "investigative" matter, which deals with non-SBDM issues, including but not limited to local school board issues,

financial matters, and various teacher and student topics. It is possible for multiple issues in a complaint to be of both varieties, in which case the file will be categorized by the most predominant grievance. If deemed necessary, the complaint may also be split into two files.

Once opened, a case is normally assigned to two investigators, with one being designated as the primary or lead investigator. A more complex case or a case with numerous or more difficult issues may require the attention of more than two investigators.

In most matters, OEA investigators conduct an onsite visit to the school district. OEA staff interview persons with knowledge about the complaint, and those may include superintendents, board members, central office staff, principals, teachers, parents, SBDM council members, and classified employees. OEA does not interview students. In order to provide reasonable notice and to make sure that specific individuals will be present in the district for interviews upon the arrival of the OEA investigators, districts are notified about OEA visits in advance, usually three days beforehand. The subject matter of the visit is usually not disclosed; however, at times it is necessary to reveal some basic facts to arrange the necessary interviews. This type of notice and the provision of limited detail strike the necessary balance between being courteous to the interviewees and ensuring their availability for interviews without having a potentially detrimental effect on the investigation. Following a visit, supplemental information can be gathered by telephone contact or through the mail. If necessary, an additional onsite contact with the district will be made.

### **Final Reports and Recommendations**

Following an onsite visit and consideration of all relevant information, a preliminary investigative report is sent to the subject(s) of the complaint. This allows those who were investigated to review OEA's preliminary findings, conclusions, and proposed resolutions of the matter. Generally, a two-week time frame is given for any reply to the preliminary report. The reply is optional, and additional time is granted upon request. Any additional input received is considered before OEA issues a final investigative report. Final investigative reports are sent to the individuals who are the subjects of the inquiry, to the complaining party if known, and to the board of education or superintendent. If OEA does not substantiate any or all of the complaint, the report explicitly notes that finding.

Any complaints that are substantiated are specifically detailed and a resolution calling for corrective measures is contained in the final investigative report. Resolutions of substantiated complaints include requiring additional training in particular areas of

education law, amending or changing district or school policies, and supplying information to OEA in the future for the purpose of monitoring compliance with the law. Sections 27 and 28 of Kentucky's Constitution separate the powers of the legislative branch (including OEA) and of the executive branch (the KBE, KDE, and EPSB.) Enforcement is an executive function. However, under KRS 160.345, OEA is to resolve conflicts, if possible, and the vast majority of matters are resolved through training and other compliance activities.

OEA attempts to resolve all substantiated complaints by advising school districts and personnel of the appropriate action required to comply with the law. In circumstances where there is a demonstrated pattern of conduct that is detrimental to the implementation and functioning of SBDM law, that pattern constitutes a violation. This violation gives OEA the authority to make a referral to the Kentucky Board of Education (KBE) for possible reprimand. A second pattern of conduct constituting a second violation of SBDM law makes the individual subject to referral to KBE and also subject to possible removal or dismissal. KRS 160.345(9)(a), (d).

In non-SBDM cases where serious violations have been substantiated, OEA has the option to make a referral to an agency with jurisdiction to take appropriate remedial or punitive action. Under KRS 156.132, the commissioner of education and the KBE are empowered to discipline, suspend, and remove district personnel and board members under sufficiently serious circumstances. A local board member who is ineligible for office under KRS 160.180 due to such violations as nepotism, conflict of interest, or holding incompatible offices may be referred to the Office of the Attorney General for possible removal under KRS 415.050 and KRS 415.060. OEA may refer a certified employee, such as a teacher or administrator, to the EPSB for possible disciplinary action and revocation of certification pursuant to KRS 161.120.

## **Investigations and School-Based Decision Making Cases**

As previously noted, OEA separates the complaints it receives and the cases it opens into two broad categories: SBDM and investigative cases. Following is a discussion of the most commonly made and investigated complaints received and handled by OEA.

### **School-Based Decision Making Cases**

As of 1996, every public school in the state was required to operate with a SBDM council, unless exempted pursuant to statute. The overwhelming majority of schools have a SBDM council. KRS 160.345 governs the operations of school councils, which are



usually composed of the school principal, three teachers, and two parents of children who attend the school. Under specific circumstances, extra members may be elected to the council or the council may have a larger regular membership. Councils have been mandated by law for over 20 years and council members are required to undergo training to serve, but OEA receives frequent complaints that deal with the operation of councils.

**Elections.** KRS 160.345(2)(b)(2) provides that teacher representatives be elected by a majority of the teachers. Parents are chosen in elections conducted by the school's parent-teacher organization or by the largest group formed for the purpose of electing parent members. If no minority member is chosen by the teachers or by the parents, the school principal has the responsibility to ensure the election of minority members if the school has 8 percent or more minority enrollment as of the previous October. The statute clearly describes that the parents conduct the parent elections and the principal is responsible for the minority member elections. The statute does not provide specific instructions regarding who conducts or is responsible for teacher elections, and reflects only that teachers are elected by a majority vote of their peers.

OEA receives various complaints about elections, including concerns that principals are participating in teacher and parent elections. As stated above, principals are to play no role in parent elections, but the law is not specific with regard to teacher elections. It is OEA's position that it is best for principals to refrain from involvement in the teacher elections, so as to allow the teachers the opportunity to select their representatives in their own process. Having the teachers conduct their own elections also protects the principal from allegations of overreaching or trying to influence the outcome of the teacher elections.

**Personnel.** OEA receives a steady stream of complaints related to school personnel issues and alleging that school council prerogatives are infringed upon by principals and superintendents.

**Principal Consultation Before Hiring.** KRS 160.345(2)(h) requires that the school principal consult with the school council before filling personnel vacancies, except for the filling of a vacancy in the principal position. OEA often receives complaints that school staff (certified and classified) is hired by the principal or by the superintendent without the council being consulted. This consultation is a bedrock aspect of the Kentucky Education Reform Act. Failure to consult with the council is among the most frequent complaints OEA receives. When faced with a substantiated lack of consultation which has resulted in the hiring of an employee in violation of the law, OEA informs the relevant parties in the district about the requirements of the law. OEA often then

requires the district or school to provide documentation of compliance, such as correcting council policy to comply with the statute and copies of vacancy postings and minutes of council meetings that refer to the consultation process in hiring.

**Policies.** KRS 160.345(2)(i) provides that councils must adopt policies to be implemented by the principal in eleven important areas of school operation. The required policies include, but are not limited to, curriculum, assignment of staff and students, school scheduling, school space, discipline, extracurricular activities, alignment with state standards, and consultation in hiring. OEA receives complaints that school councils do not have policies in these areas, that policies exist but are ignored, or that policies exist but are deficient and incomplete. If these complaints are substantiated, OEA informs the district and the council about the statute; refers them to resources for suggested policies; and requires that the school forward newly enacted, revised, or amended policies for review by OEA.

**Budget.** KRS 160.345(3)(a) empowers school councils to make decisions that have budgetary impact. Councils are to determine the number of persons to be hired in each job classification, make decisions about textbooks and instructional materials, hire principals, and establish committees. The statute also requires that councils enact policies to deal with essential aspects of school functioning, as detailed above in the discussion of policies. In order to implement SBDM, the council must have influence over the school budget after money is allocated to the school by the board of education. OEA commonly receives complaints alleging that school councils are not approving the budget and recording that approval in their meeting minutes. When such complaints are substantiated, OEA informs the district and the school and, to ensure compliance, seeks future documentation of budget review and approval by the council.

**Open Meetings And Open Records.** As public agencies, the documents and activities of local school boards of education, central offices, schools, and school councils and committees are subject to the open meeting and open record provisions of KRS 61.800 through KRS 61.884. Open meeting and open record violations are sometimes reported to OEA.

- **Meeting Times and Notice.** Complaints often allege that regular school council meeting times are not established, that meeting times or council elections are held at times not convenient for the public, and that special called meetings are not conducted with the required special notice to members and the public. The statute provides that violations may be challenged through the Office of the Attorney General and the courts. OEA does not get involved in those proceedings. However, when OEA is made aware of and substantiates violations,

the district and the school are informed about compliance with the law and required to document that the statutes are followed in the future. Involvement by OEA is made necessary because council meetings without proper and lawful notice to members and the public impair the transparent operation of the council.

- **Closed Meetings.** Allegations are sometimes made that during a meeting the council moves into closed or executive session away from the public. KRS 61.810 authorizes such non-public sessions, but only under the circumstances specified in that statute. Substantiated complaints of this nature are followed by notification and the requirement of evidence of future compliance with the law.
- **Meeting Minutes.** KRS 61.835 requires that public agencies keep accurate minutes of votes and actions and that the minutes be available to the public by the next meeting time. Since boards of education and school councils cannot effectively function without accurate minutes to provide a reliable record of actions regarding consultation, budget, curriculum, and numerous other important school and district matters, OEA investigates complaints of inaccurate minutes and the failure to keep minutes. Substantiated violations are described and the board of education or school council is required to document future compliance.

## Investigative Cases

Complaints involving non-SBDM issues are categorized as investigative and include a variety of topics such as local board of education member eligibility, financial improprieties, teacher certification, and substitute teacher issues.

## Board Of Education

- **Member Eligibility.** KRS 160.180 provides the qualifications for local school board of education members. OEA often receives complaints that a candidate, a board member-elect, or a current board member has violated this statute. According to KRS 160.180(3), the Kentucky Office of the Attorney General has the authority under KRS 415.050 and 415.060 to file court actions to remove usurpers of a local school board office. A usurper is one who illegally holds such an office, whether ineligible to seek or hold the position or disqualified after assuming the post.
- **Nepotism.** Complaints regarding board membership may allege the employment by the school district of a relative of the board member, which is prohibited by KRS 160.180(2)(i). A relative is defined as the father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, or daughter-in-law of the

board member. KRS 160.180(1). Opinion of the Attorney General 92-160 interpreted the definition of relative as being a blood relative, excluding non-specified relationships by marriage. OEA investigated such complaints and then makes a referral to the attorney general regarding any ouster proceeding against the board member. This is consistent with KRS 7.410(2)(c)4, the authority of OEA to investigate wrongdoing in the schools, and KRS 415.050 and 415.060, regarding power of the Office of the Attorney General to seek removal of usurpers. The ultimate decision to file or to not file a removal action rests with the attorney general.

- **Incompatible Offices.** A complaint may charge that a board member holds a position that is incompatible with school board membership and that therefore disqualifies the member pursuant to KRS 160.180(f). The list of incompatible offices is further described by KRS 61.080 and Kentucky Constitution Sections 165 and 237. If it is substantiated that a local school board member, who is considered a state officer, simultaneously serves as a city or county officer or employee, the board member is subject to removal by the Office of the Attorney General. Following a referral of such a matter by OEA, the attorney general then decides whether to seek ouster of the board member.
- **Financial Conflicts Of Interest.** OEA receives complaints that board members have financial conflicts of interest, which are prohibited by KRS 160.180(2)(g) and (3). Should OEA substantiate that a board member has an inappropriate direct or indirect interest or benefit in a matter for which board funds are expended, referral to the Office of the Attorney General for removal is possible. Kentucky case law and Opinions of the Attorney General have further defined these provisions of the law, creating some inclusions and some exceptions under the statute. Financial conflict cases are highly fact specific and require careful analysis.
- **Residency.** Complaints that board members are ineligible because they live outside of the school district they represent are not rare. Such cases require investigation and analysis under state law regarding eligibility to vote, as board members are required by KRS 160.180(2)(b) to be voters in the district they represent. Investigative findings are forwarded to the Office of the Attorney General for possible removal proceedings under KRS 415.050 and KRS 415.060.
- **Influencing or Attempting To Influence District Hiring.** KRS 160.170 prohibits board members from influencing or attempting to influence the hiring of any school employee, other than the superintendent and board attorney. Complaints charging a board member with involvement in personnel matters sometimes rise to the level of alleging improper attempts to influence or actually influencing hiring through board member contact with the superintendent, principal, or council members. Investigative findings may be referred to the Office of the Attorney General for review and disposition.

- **Financial Improprieties.** Complaints that schools funds are not handled appropriately include charges of carelessness and failure to follow proper procedures, up to and including allegations of outright theft. Such cases are handled carefully since OEA could uncover indications of criminal activity, which might in turn lead to a criminal investigation and prosecution by an appropriate law enforcement agency.
- **Outside Activity Funds.** Allegations of carelessness and failing to follow procedures often deal with the manner in which booster clubs handle money. 702 KAR 3:130, which includes accounting procedures commonly known as “the Redbook,” requires booster organizations to provide the school district with a proposed annual budget, a summary of expenditures at the end of the year, and a list of officers. OEA has limited authority over a booster club that maintains its money in a separate account outside the school system, but OEA can insist that the club obey the Redbook requirements. Vending machine profits at schools are often earmarked for a particular club or activity and can be a significant source of revenue. Accounts must be audited carefully to ensure that the proceeds reach the intended beneficiary. However, in cases where the procedure is not followed but funds are appropriately spent and accounted for, OEA seeks to secure compliance from boosters and those with access to the funds. Substantiated complaints of this nature are followed by notification and the requirement of evidence of future compliance with the law.
- **Travel Expenses.** OEA investigates irregularities in the reimbursement of travel expenses. Problems may include incomplete or wholly absent documentation, unclear reimbursement policies and credit card procedures, and reimbursement of spousal and other family member expenses.
- **Failure to Exercise Financial Oversight.** OEA has received complaints of local boards failing to approve all board expenditures at each monthly meeting. Failure of the board to exercise proper oversight over district finances can lead to inappropriate spending of district funds. Further, failing to review expenditures is an abdication by board members of the obligation to do their best to ensure the solvency and sound financial status of the school district. Board members in such cases are instructed to exercise better stewardship over the large sums of public money that they control.
- **Surplus Property.** OEA receives complaints alleging the failure to declare outdated and unused district property as surplus and to dispose of it according to law in the best interest of the district. Empty buildings that serve no purpose except to cost the district liability insurance premiums may sit unoccupied for years without any plan for revitalization and use or disposal. Buildings and lots can be assessed for value and then sold at auction, through bidding and even private sale. Property located in small towns or rural areas may not have great

commercial or residential value, but the sale of such properties may at least relieve the district from the burden of maintenance and insurance. OEA works with the school district to achieve compliance with the law in these circumstances.

**Boundaries and Residency.** When it is unclear which school district has the responsibility to educate a child who resides in an area where there is a question about the boundaries, OEA will try to assist the interested parties. This has occurred in rural areas where the line between districts is cloudy. Each district may claim that the child lives in the neighboring district and that it is the responsibility of the neighboring district to educate that child. Questions may also arise about the residency of a child for education purposes when the child of divorced or separated parents actually splits living time between the parents and different school districts. In all of these matters, OEA attempts to determine the district in which the child resides and to have the child enrolled in the appropriate school system.

**Certification.** OEA receives allegations that districts are hiring emergency certified or alternatively certified teachers instead of hiring fully certified teachers. While emergency certified individuals may be hired to teach, they may be employed only upon a showing that there were no other qualified teachers available. If OEA substantiates that an emergency certified applicant has been inappropriately hired over a fully certified person, the district or school is notified about proper hiring practices and required to provide evidence of future compliance with the law.

No violation has occurred if the person hired over a fully certified teacher is alternatively certified. Alternatively certified individuals are those who simultaneously have a commitment from a school district for employment and acceptance into a college alternative program for certification in the area in which the person will teach. The EPSB considers alternatively certified persons to be of equal status with regularly certified teachers, and OEA follows that protocol. Since a district is not required to state that no certified teachers were available before hiring an alternatively certified individual, districts are free to employ alternatively certified individuals instead of certified teachers without violating state law.

OEA frequently utilizes the expertise of the EPSB when analyzing complaints concerning certification.

## Chapter 2

### Research

KRS 7.410 requires EAARS to adopt an annual research agenda for OEA. The agenda is assigned and carried out under the direction of EAARS. The process involves discussion of possible topics between OEA staff and members of EAARS. Once the topics have been narrowed down, a summary of the suggested topics is presented to EAARS for consideration and adoption. OEA's Research Division consists of a manager, four full-time research analysts, and one part-time research analyst. OEA staff conducts research throughout the year and reports studies to EAARS when the studies are completed.

In 2018, the following studies were presented to and approved by EAARS. Each has been published and can be found on the LRC publications website.

#### **Kentucky District Data Profiles School Year 2017; Research Report No. 453** ***[Selected highlights]***

This report provides a comprehensive overview of all 173 school districts operating in the state during 2017. The report includes longitudinal data covering district demographics, finance, staffing, and school performance from fiscal years 2014 to 2017. The demographic section contains district data on free and reduced price lunch, school membership, race, educational attainment, and discipline. The staffing section reports the number and percentage of certified and classified staff, full-time equivalent teachers, pupil/teacher ratio, average teacher's salaries, teacher's years of experience, teacher's rank, contract teaching days (the number of base days a board of education has opted to pay certified staff each year), and each district's certified salary schedule. The finance section details per-pupil current expenditures, revenues by source, end-of-year fund balances and percent, and detailed financial data on district tax rates. The performance section presents data on student performance on kindergarten readiness, ACT, Next-Generation Learners accountability model, Dual Credit, and AP exams.

#### **Homeschooling In Kentucky; Research Report No. 454**

Home school enrollments are growing in Kentucky and the nation. Home school advocates cite academic and social benefits of educating children at home, and the freedom it provides for families who wish to educate their children outside the formal structures of public, private, or parochial education. Public school officials, while acknowledging the quality of education in many home schools, worry that some families falsely claim to be homeschooling.

This report provides home school enrollment data for Kentucky and outcome data for the minority of home school students for whom it is available. Complete or representative outcome data for home school students are not available in Kentucky or the nation. The report also compares Kentucky's legal requirements for home schools with those in other states and reports challenges in the implementation of Kentucky laws that require compulsory school attendance and protect children's fundamental right to educational instruction.

At 3.6 percent, the percentage of school-aged children who are homeschooled in the commonwealth slightly exceeds the 3.3 percent estimated for the nation. Home school enrollment varies substantially among Kentucky districts, ranging from less than 1 percent to over 10 percent. Home school enrollment has increased in most districts in recent years. These increases reflect parents' concerns about the social environment in public schools, school safety, and, for some, the perception that they cannot trust the information being provided by public schools. Sharp increases, beginning in 2015, in the number of high school students who transferred from public school to home school may be associated with the changes that were to go into effect in most districts in 2016, raising the legal age to drop out of school from 16 to 18.

Although outcome data are not available for most K-12 home school students, the Kentucky Council on Postsecondary Education collects outcome data for Kentucky home school students who take college classes, either as high school students or after high school graduation. Home school students who enroll in postsecondary institutions earn higher GPAs than do their public or private school counterparts, whether in dual-credit high school classes or in college classes. As first-year college students, 61 percent of Kentucky home school graduates earned GPAs of 3.5 or above in 2017, compared to 41 percent of recent public school graduates. Home school students enrolled in Kentucky postsecondary institutions also had higher ACT composites than their public school counterparts, earning an average ACT composite score of 23.9, compared to 22.5 for public school graduates. However, the data may not be representative of all homeschoolers, as only approximately one-fifth of Kentucky home school graduates attend college in Kentucky. Academic outcomes for the majority of home school students are simply unknown.

The report also provides data supporting the claims of directors of pupil personnel (DPPs) that some families may be reporting their children as homeschooled as a way of avoiding legal consequences for public school truancy. Almost one-third of the students who transferred to home school from public schools in 2017 were absent 20 percent or more of their enrolled days at the time of their transfer. Because DPPs are required to



visit the homes of truant public school students, they often have experience with families who ultimately withdraw their children to home school, and they worry that the conditions they observe in the home—lack of parental education or of instructional materials—make it unlikely that the homeschooled children will be educated.

A family that wishes to homeschool in Kentucky must notify the school district of a child's home school enrollment. No minimum level of education for home school instructors is required. Although required by law to teach a variety of subjects and for a duration at least as long as the public school term, home schools are not required to regularly submit any evidence that they are complying with these requirements. Home schools are, however, required to keep scholarship and attendance reports that are open to inspection by DPPs.

The legal requirements that apply to Kentucky home schools are higher than those in surrounding states Illinois, Indiana, and Missouri and in many states across the nation that do not require home schools to report enrollment or teach specific subjects. Kentucky's home school requirements are lower than those in surrounding states Ohio and West Virginia, and lower than at least one homeschooling option in Virginia and Tennessee. These surrounding states require home school instructors to have at least a high school diploma or be otherwise qualified and to submit evidence, such as standardized test scores, that students are learning.

In Kentucky, as in many other states, the laws that apply to home schools exist in a complex environment caused by tension between parents' rights to freedom of religion or conscience in determining the education that is appropriate for their children and government officials' obligation to enforce laws that require children to be educated. The responsibility for implementation of laws that require children to be educated in the commonwealth, as those laws apply to home schools, is divided among DPPs, the Cabinet for Health and Family Services (CHFS), local courts, and private individuals who are concerned that a child is not being educated. As reported by DPPs, implementation of these laws varies substantially among districts, as does the likelihood that changes will be effected in a home school that does not appear to be educating. DPPs are charged statutorily with the duty to enforce compulsory attendance laws for all children in their district, but approximately half of DPPs disagree that they have the practical ability to carry out this duty with homeschooled children. DPPs have limited authority to monitor the education being provided by home schools and no authority to require changes in home schools that do not appear to be educating.

Accountability for home schools that may not be educating their students rests ultimately with CHFS and the local courts; under Kentucky law each entity has the

authority to determine whether a child is not being adequately educated and thus educationally neglected. Home school advocates cite these laws as an adequate mechanism to provide accountability for home schools. As reported by DPPs, the likelihood that a home school that is not educating a student will face consequences varies substantially among districts depending, especially, on how local CHFS workers and judges address reports of educational neglect.

Statute authorizes, but does not require, the Kentucky Board of Education and the Kentucky Department of Education (KDE) to take steps that might add some clarity to home school requirements, and it authorizes, but does not require, KDE to play a role in inspecting attendance and scholarship reports. Neither the board nor KDE has acted on these authorities. In 1997, a "Best Practices Document" was developed by a task force that included representatives from the Christian Home Educators of Kentucky and the Kentucky Home Education Association, DPPs from four Kentucky districts, and the KDE liaison for nonpublic schools; the document has been updated since then. The document was developed to provide some guidance, clarity, and common understanding of home school laws for home school parents and DPPs. Many DPPs are not aware of the "Best Practices Document." Others are aware of the document but unsure of whether it constitutes legal guidance or informal guidance. The "Best Practices Document" does not address the role of CHFS or the courts.

The report highlights five major findings:

Finding 3.1-KRS 159.040 authorizes the Kentucky Board of Education to play a role in establishing criteria required for attendance and scholarship reports that apply to all schools. The board has not proposed regulations for the keeping of scholarship reports.

Finding 3.2-KRS 159.040 requires home schools to keep attendance in a register provided by the Kentucky Board of Education. The board does not provide home schools with an attendance register.

Finding 3.3-KRS 159.040 allows the Kentucky Department of Education to play a role in inspecting attendance and scholarship reports. KDE does not currently play such a role.

Finding 3.4-The "Best Practices Document" developed in 1997 and updated since then attempts to provide clarity to homeschooling families and DPPs. The document was developed by a task force that included members of statewide home school organizations, DPPs, and a representative of the Kentucky Department of Education. Many DPPs either are not aware of this document or are confused about whether it represents law or whether it represents suggested practices.

Finding 3.5-By law, the Cabinet for Health and Family Services and local courts have the sole authority to determine whether a child is being educationally neglected.

Currently, guidance and tools to make determinations of educational neglect are limited. Thus, determinations of educational neglect are made based on the discretion of workers with the Department for Community Based Services or of judges.

### **Textbooks And Instructional Materials; Research Report No. 455\_U**

Instructional materials encompass the tools used by teachers to implement prescribed curriculum and to facilitate student learning. Current literature has indicated that instructional materials can have profound direct effects on student learning, yet due to the vast array of instructional materials available in print and digital formats it can be an arduous task for stakeholders at all levels to make sure that teachers have the properly vetted materials, and that they also receive adequate training and professional development to ensure fidelity of implementation of those materials. Current literature stating that quality instructional materials used by well-trained teachers promotes student academic success. However coming to this determination has been difficult for researchers due to the vast array of materials used by teachers in modern classrooms. Whereas 20 years ago more than 70 percent of teachers indicated that published textbooks were their primary source of instructional materials used on a weekly basis, teachers now report using various materials in the classroom including: district/school selected materials, formal/published curricula, informal/online lessons, self-developed materials, as well as materials that are aligned with state academic standards and those that are not.

This report provides an overview of the laws governing the adoption and purchasing processes for instructional materials for public schools in the commonwealth, a breakdown of instructional materials purchases across the state over a 10 year period, and highlights the shifting landscape of instructional materials from primarily print sources to technology-related sources.

Primary data sources for this report include: district level Annual Financial Report (AFR) data used to track instructional resource expenditures, state grant allocation data, education technology data taken from the Kentucky Department of Education Technology Readiness Survey, and an Office of Education Accountability (OEA) developed survey designed to gain insight on the adoption and purchasing processes of instructional materials at the district level.

704 KAR 3:455 is the primary administrative regulation in relation to the adoption and purchasing guidelines for instructional resources. KRS 156.433 and KRS 156.439 require the Kentucky Board of Education to promulgate administrative regulations to identify which instructional resources may be purchased with state instructional resource funds,

and establish procedures for calculating and distributing the instructional resource allocation for districts, and establish other policies and procedures required to implement the requirements pertaining to instructional resources outlined in statute. KRS 156.405 establishes, and other related statutes reference, the State Textbook Commission (STC) which was created to aid districts and schools with instructional materials selection and purchasing through the development of a list of vetted textbooks and instructional materials. KRS 156.405(9) states that the State Textbook Commission meetings are to occur at least once per quarter, and advance notice should be given for these meetings that are open to the public subject to KRS 424.110 and KRS 424.210.

The State Textbook Commission has not met since June 2015 and has not maintained minutes or a listing of members during this time. The STC has not been involved in the review process for instructional materials in recent years. Instead the review, selection, and purchasing processes are managed at the district level by district textbook coordinators and other district support staff.

The OEA Print And Digital Instructional Materials Survey was sent to all 173 public school district superintendents and of those 160 districts (92.5 percent) responded. In all there were 174 total respondents within the 160 districts, with 13 districts utilizing multiple respondents to complete the survey.

Linking the purchases of print and digital materials was common, with nearly 70 percent of districts responding that they "occasionally" or "often" linked the purchasing of print and digital basal materials within purchasing contracts.

Over the past 2 decades the prevalence of digital instructional materials have increased considerably in public school classrooms. This relationship is thought to be directly correlated with the overall rise of technology in modern society. On its surface the rise of technology use in classrooms is assumed to be positive, but due to rapid implementation there have been some negative externalities. Survey respondents identified advantages and disadvantages brought on by the use of digital instructional materials at the student, teacher, and district/school levels. Notable advantages were increased access to technology for students, increased personalized learning opportunities for students, frequent updates to digital materials ensure that content used by teachers is up-to-date, and increased levels of content organization through the use of learning management systems. Notable disadvantages listed by survey respondents were potential for increased levels of student distraction, lack of reliable and up-to-date hardware from classroom to classroom, and the costs associated with

acquiring the adequate amount of technology hardware can be a considerable barrier for districts.

Expenditures at the district level for instructional materials in Kentucky's public schools originate from local, state, and federal sources. This report provides a breakdown of expenditures for instructional materials from the general fund and special revenue funding. The general fund appropriates funds for elementary and secondary education to the Kentucky Department of Education (KDE) which are then distributed to local districts through the Support Education Excellence in Kentucky (SEEK) funding program that was developed by the General Assembly in 1990 as part of the Kentucky Education Reform Act.

Direct funding appropriated by the General Assembly for instructional resources for grades K-8 is included within special revenue funding as a state appropriated grant. Students in grades 9-12 do not receive these specific instructional resource funds. Instructional resource funds for grades K-8 were not appropriated for school years 2012 through 2014. During this time period districts had to rely upon other funding sources such as the General Fund and other sources such as grants and fees for instructional materials purchases. Special revenue funds also include funds from local, state, and federal grant sources that are to be used for specific purposes. Special revenue funds in many cases require recipients to not only spend the money on specific purposes, but may also require recipients to meet other stated goals as required by the supplier of the funds. For instance, increased levels of professional development may be required of districts receiving specific grant funding.

A financial analysis on instructional materials purchases made from 2008 through 2017 was conducted on data from the Annual Financial Reports of local districts. Total purchases for the selected object codes summed to more than \$1.5 billion over the 10 year period. Expenditures for technology hardware summed to more than \$634 million, which accounted for approximately 40 percent of instructional materials purchases from Funds 1 and 2 over the course of the observation period. Altogether, more than 64 percent of instructional materials expenditures were used to purchase technology-related materials and hardware during this time period. Total expenditures for the selected instructional materials object codes were computed at the student level using total student membership as the denominator.

On average, districts spent approximately \$242 per student on instructional materials each year during the observation period. On average districts spent \$88 per student on print materials annually. Districts spent \$155 per student per year on technology hardware and related instructional materials. Overall, districts have invested

approximately \$2 in technology hardware and related materials for every \$1 spent on traditional print materials. Only 3 districts spent more on print materials relative to technology hardware and related materials over the 10 year observation period.

This study provides an overview of education technology resources in Kentucky school districts, primarily using technology information from the Kentucky Technology Readiness Survey. The survey provides annual information about the technology infrastructure in districts and schools. Instructional resource funding is included within the Flex Focus funding program allocated by the General Assembly. Other expenditure categories in Flex Focus include extended school services, preschool, professional development, and safe schools. Districts have autonomy to utilize funds from one Flex Focus category into another with the exception of the preschool category that is restricted from having funds taken out, but other funding categories can be added to the preschool category.

Overall, districts have increased the number of instructional devices used by students and lowered device-to-student ratios, providing more access to technology for students and teachers. Nearly 70 percent of districts responding to the OEA survey indicated that securing a 1:1 device per student ratio is, or was, a high priority in their district. In 2017, there were 1.3 students per device in Kentucky. This ratio has become closer to 1:1 since 2014 when there were 2.0 students per device. Sixty districts provided one device for every student in 2017, accounting for 34.7 percent of districts and 23.9 percent of students.

## Major Findings Of The Report

Finding 2.1-KRS 156.405 establishes the State Textbook Commission to provide a recommended list of current and high quality instructional materials to local school districts. KRS 156.405(9) states that the commission is to convene at least once per quarter in meetings that are open to the public subject to KRS 424.110 and KRS 424.210. The commission has not met since June 2015.

Finding 4.1-The 2018-2024 KETS Master Plan includes conflicting measures of student attendance.

Finding 4.2-The KETS Master Plan and the Kentucky Technology Readiness Survey are available online, allowing citizens and policymakers to access information and to understand the technology strategy for Kentucky education, the state of Kentucky's technology education across districts, and the progress that has been made.

Finding 4.3-Between 2014 and 2017, Kentucky school districts increased technology devices, reduced device-to-student ratios, and updated operating systems.

The data only shows that districts acquired the technology tools to carry out educational goals; however, the actual effects on student learning and outcomes are unknown.

## **State And Local Funds Distributed To Higher Poverty Schools; Research Report No. 457\_U**

Since the Kentucky Education Reform Act was passed in 1990, the General Assembly has sought to address the achievement gap in Kentucky schools. KRS 157.310 states that it is the intention of the General Assembly to assure substantially equal public school educational opportunities for all students in attendance in the public school of the commonwealth, KRS 158.6451 declares that schools shall expect a high level of achievement of all students, and KRS 160.1591 declares that reducing achievement gaps in Kentucky is necessary for the state to realize its workforce and economic development potential.

Research suggests that students who live in poverty do not perform as well as students who are not living in poverty. Schools with higher-poverty students require more resources to improve their student outcomes. In addition, literature describes how students who grow up living in persistent poverty tend to have greater academic deficiencies than those who do not grow up in persistent poverty.

The study examined student level data and determined that students who qualified for free or reduced-price lunch (FRPL) each year between 3rd - and 8th -grade were considered to be in persistent poverty. This report examined the outcomes of 8th - graders living in persistent poverty and their performance to 8th -graders who were not living in persistent poverty. There were 19,180 8 th -graders living in persistent poverty. Their math proficiency rate was less than half the rate of students that never qualified for FRPL and their reading proficiency rate was 35.5 percent lower.

In Kentucky, 72 districts have 50 percent or more of their 8th -graders living in persistent poverty. Kentucky's state and local funding formula for districts, Support Education Excellence in Kentucky funding (SEEK), provides extra funds for students considered to be living in poverty because they qualify for the federal free lunch program. Districts are not, however required to take student poverty into account in the allocation of district funds to individual schools. While the difference in school poverty rates among schools is relatively small in many of the state's districts, others have stark differences in FRPL eligibility rates between their highest- and lowest-poverty schools; in one district the difference in FRPL eligibility rates is 87 percent. While some districts elect to allocate more funding to higher-poverty schools, many do not.

This study examines district policies related to the allocation of state and local funds to individual schools. It also analyzes state- and district-level expenditures in higher- versus lower- poverty schools. The study finds that, on average, expenditures are greater in the states' higher- versus lower-poverty schools, but this is not true in many Kentucky districts. The majority of district general fund revenue is distributed to schools through staffing allocations that are based on pupil/teacher ratios as defined in regulation or district policy. The study finds that, while the majority of Kentucky districts (70 percent) have staffing allocation policies that go beyond the minimum requirements in regulation, only six Kentucky districts have staffing policies that take student poverty into account in the distribution of funds.

The SEEK formula also provides additional funds for students have an individual learning plan and for students who are limited English proficient. This report focuses exclusively on allocation of funds for FRPL students.

Districts can also support higher-poverty schools with undistributed revenue, or Section 7, funds which remain after districts budget for district-wide expenses, staffing allocations, and contingencies. Section 7 funds can be distributed based on schools' needs as indicated in school or district comprehensive planning documents. These needs might include additional academic support for students living in poverty. Less than half of Kentucky districts elected to distribute Section 7 funds to schools in 2017.

There is no cap in Kentucky on the amount of district revenue that can be held in contingency. Districts held almost \$975 million dollars or 19.2 percent in fund balance for 2017. By allocating more money to the contingency fund, districts allocate less Section 7 funds to schools. While average spending statewide is greater in higher-versus lower-poverty schools, the same does not always hold true within Kentucky districts. Of the districts with more than one school at the elementary and middle school levels, fewer than half (about 40 percent) have per-pupil expenditures that are greatest at the highest-poverty school, whereas more than half (60 percent) of districts that have more than one high school spend more at the highest-poverty high school.

Like Kentucky, several states fund districts using a weighted formula, however schools in Kentucky are not funded the same way. In order to provide equitable distribution of funds based on student needs, some districts across the nation are starting to change how they allocate funds to schools. One method of distributing funds to schools is based on a weighted student formula (WSF). This type of formula gives each student a base funding amount based on grade level and then will have an additional amount for each student qualifying for FRPL, special education, limited English proficient, gifted and talented, or taking vocational educational classes. In addition, some WSF formulas will



include additional funds for students who are off track to score proficient or have poor academic performance. While Kentucky uses a WSF to fund districts, schools within districts are not funded in this manner.

Districts across the United States have been moving toward a WSF distribution for their schools. In 2011, Boston Public Schools started funding their schools based on weights given to pupil characteristics. Baltimore, Indianapolis, New Orleans, and Cincinnati have also started using a similar school funding mechanism. Using a WSF, schools are able to use the additional resources for staffing and materials that best meet the needs of their students. Using a WSF at the school level also increases the likelihood of the highest need schools receiving more funds than the lower need schools in each district.

The intent of the SEEK funding formula is to equalize funding between high- and low-poverty districts. Districts currently receive additional funds for students qualifying for free lunch, with different levels of disabilities, and for students who have limited English proficiency. While there is great variation in poverty between districts, there is also a great deal of variation within districts. If the intent of the SEEK formula is to ensure students from at-risk backgrounds receive more education funding, Kentucky may want to consider adopting a WSF model at the school level.

## Recommendation and Finding

Finding 2.1-School level expenditures are inconsistently coded across school districts and preschool students are not counted in membership totals on the school report card when calculating expenditure results.

Recommendation 3.1-The General Assembly may wish to revisit how districts allocate funds to schools and consider switching to a Weighted Student Formula (WSF) that would provide funds based on the number of students enrolled by grade and those students' needs.

## 2019 Approved Study Topics

Career and Technical Education Revenue and Expenditures – This study will analyze state, local, and federal revenue and expenditures for career and technical education in the commonwealth's secondary schools. It will look, in particular, at differences in revenues for and expenditures by state-operated Area Technology Centers (ATC) versus locally operated Career and Technical Centers (CTC)s. The study will also report student enrollment in ATCs and CTCs and estimate per-pupil revenues and expenditures for each.

Career and Technical Enrollment and Subsequent Employment by Sector – This study will report career and technical opportunities available to students in the commonwealth relative to indicators of workplace demand. Using data from the Kentucky Center for Statistics, the study will also analyze the relationships between career pathways completed and credentials earned by high school students in the commonwealth and sector-specific employment and wages, by employment sector, for up to two years following high school graduation. All data will be disaggregated by district, region, and student demographic characteristics.

Teacher shortages and supports for new teachers – This study will examine teacher retention and turnover rates in the commonwealth, including both academic subjects as well as CTE. The study will examine teacher turnover rates by district, region, school demographics, and certification type (including emergency and alternative). Analysis will include the number of teachers serving with emergency and alternative certificates, the number of years they serve using those certificates, and the subject areas and levels in which they teach. The study will also examine the association between teacher turnover and student outcomes.

OEA has, through legislation, been directed to study the actual usage of school guidance counselors' time in schools and to report our findings to the Interim Joint Committee on Education no later than December 1, 2019.