

2020 OEA Annual Report

KRS 7.410(2)(c)8. requires the Office of Education Accountability (OEA) to prepare and submit an annual report, including a summary 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).

OEA hit a milestone in 2020. Formed by the Kentucky General Assembly in 1990, in response to the Kentucky Education Reform Act (KERA), OEA has been overseeing public education for the General Assembly for thirty years. OEA has had four Directors appointed by the Legislative Research Commission (LRC), Dr. Penney Sanders from 1990-1998, Dr. Kenneth Henry from 1998-2003, Marcia Seiler 2003-2014, and David Wickersham 2016-2020.

Since 1990 OEA has carried out duties codified in KRS 7.410(2)(c). The statute sets out various duties to carry out under the direction and oversight of EAARS. Two main responsibilities include the original directive of investigation and later added duties related to research. The statute in part reads "Investigate allegations of wrongdoing of any person or agency, including but not limited to waste, duplication, mismanagement, political influence, and illegal activity at the state, regional, or school district level;..." and "Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, conduct studies, analyze, verify, and validate the state assessment program..."

Chapter 1

Investigations

Since 1990, under KRS 7.410(2)(c)4. and through an Investigations Division, OEA has carried out investigative duties. A division manager oversees all investigations. The division has four 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. While complaints are submitted by mail, email, and fax, a majority of the complaints are submitted using OEA's online complaint form. With the help of the Office of Computing and Information

Technology (OCIT), OEA maintains the online complaint form and also operates a toll-free hotline.

Complaints come from multiple 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. 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. That individual is then instructed to submit a formal complaint in writing, providing as much information about the alleged wrongdoing as possible, to determine if an investigation should be initiated.

OEA received 236 written complaints in 2020 (145 of these were anonymous). In 2019, OEA received 414 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 2020.

**Table 1.1
2020 Investigations**

	Opened	Closed	Pending
Investigative	7	24	14
SBDM	3	7	10
Total	10	31	24

Note: SBDM is School-based Decision Making.

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 the Department of Education (KDE) and the Kentucky Board of Education (KBE) are empowered to discipline, suspend, and remove district personnel under sufficiently serious circumstances. The 2021 General Assembly removed this KBE authority as to local board of education members;
 - 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 Education Professional Standards Board (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 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 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 (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 is to investigate the complaint and resolve the conflict, if possible, or forward the matter to 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, the manager of the Investigations Division evaluates the situation before becoming involved. Part of the evaluation process requires a review of OEA files for any prior related cases or complaints. The division manager 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 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 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 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 KDE under KRS 158.6453.
- Special education issues are usually referred to KDE, as its Office of Special Education and Early Learning 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. 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 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, handle 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. This practice had been suspended due to recent COVID concerns, forcing OEA to work cases remotely by telephone. However, OEA has recently been cleared to resume onsite visits. Any local district concerns with masking and social distancing will be respected. 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. When OEA investigators conduct onsite visits, reasonable notice is provided to make sure that specific individuals will be present in the district for interviews upon their arrival. Districts are usually notified three days in advance. 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 individuals who are the subjects of the inquiry and to the superintendent. This allows those who were investigated to review OEA's preliminary findings, conclusions, and proposed resolutions of the matter. Generally, a two-week period 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 again sent to the individuals who are the subjects of the inquiry and to the superintendent. Complainants, if known, are notified that a final report has been issued and a copy may be obtained through an Open Records Request to OEA. 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 (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 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) and (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 KBE are empowered to discipline, suspend, and remove district personnel 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 EPSB for possible disciplinary action and revocation of certification pursuant to KRS 161.120.

School-based Decision Making and Investigative 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 30 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)(1) 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.

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) are 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, 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 to OEA for review.

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 participating in budget matters and recording council actions in their meeting minutes.

When such complaints are substantiated, OEA informs the district and the school and, to ensure compliance, seeks future documentation of the council activity.

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 are 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, and daughter of the board member. KRS 160.180(1). OEA investigates 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(2)(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, the Board Member Oath of Office, 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. Sales 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 and independent district areas where the line between districts is unclear. 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 often 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 EPSB when analyzing complaints concerning certification.

Improper Political Activity

While school district employees certainly have First Amendment rights that must be respected, OEA receives complaints that staff participate in political activities that can be detrimental to the educational process. Complaints are made that personnel engage in partisan activities on school time and with school resources, which violates KRS 161.164 and local board of education policies. OEA carefully examines such allegations and balances appropriate citizen participation against the need to prevent interference with the efficient and smooth operation of the schools.

Privacy and Confidentiality

OEA has received complaints that confidential student and employee information has been released to the public. This may violate the Kentucky Family Education Rights and Privacy Act (FERPA) beginning at KRS 160.700. Since such data and records may have already been released by the time the complaint reaches OEA, the office may become involved to minimize damage and prevent such violations from happening in the future.

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, a summary of the suggested topics is presented to EAARS for consideration and adoption. OEA staff conducts research throughout the year and reports studies to EAARS when the studies are completed. OEA's Research Division consists of a manager, four full-time research analysts, and one part-time research analyst.

In 2020, OEA completed the following studies. Each has been published and can be found on LRC's publications website.

Kentucky District Data Profiles School Year 2019; Research Report No. 466

This report provides a comprehensive overview of all public school districts operating in the state during 2019. The report includes longitudinal data covering district trends, finance, staffing, and school performance from fiscal years 2016 to 2019. The Overview and Trends section contains district data on school membership, end of year adjusted average daily attendance, student demographics, educational attainment, and school discipline. The Staffing Data section reports district data on certified and classified staff, and full-time equivalent teachers. Additional data on average salaries, years of teaching experience, and rank are provided. The Finance section covers per-pupil current expenditures and revenues by source. Each district's fund balance percentage and end of year general fund balance are reported. The Performance section presents data from kindergarten readiness to ACT results, Advanced Placement exams and trends, and selected components of the accountability system.

The District Data Profiles also include an interactive feature to allow users to view and download interactive maps and charts that are of specific interest to them. The interactive feature is comprised of three distinct data visualizations:

- 2019 Data
- Interactive Heat Maps
- 10-Year Trend Data.

The charts and maps allow stakeholders to review one district at a time, compare districts to one another, or compare districts to the state averages. The visualization that contains the 2019 data mimics the feel and scope of the print edition. The Interactive Heat Maps allow users to examine selected variables and view regional differences instantly. The 10-Year Trend Data allows users to view longitudinal data for selected variables.

An Overview of Facilities Needs and Funding In Kentucky; Research Report No. 467

Kentucky school districts pay for school facilities projects using mostly state and local funds with a smaller percentage coming from federal funds. The percentage paid from each source of funds has changed since 2006. The amount from state funds used for school facilities projects decreased from 58 percent in 2006 to 49 percent in 2020. In addition, since 2013, districts have moved \$347 million earmarked for facilities into their general funds to spend on operating expenses. During that same time frame, districts' general fund balances have increased by approximately the same amount (\$352 million).

Districts complete a facilities planning process every 4 years (up to 8 with a waiver) that prioritizes the districts' facilities needs and determines the cost of completing those projects. Priorities are set by a specially formed local planning committee (LPC) with broad representation in the school community. The LPC must take into consideration documented conditions in all school buildings and input from a series of open, well-advertised public meetings.

To better understand the condition of school facilities and districts' facility's needs, the Kentucky General Assembly passed legislation in 2010 (SB 132) and again in 2016 (HB 303) to get a better understanding of what each district critical needs are. HB 303 (2016) provided funding for an electronic facility tracking system that would include all buildings. The Kentucky Facilities Inventory and Classification System (KFICS), is the mechanism to track this information, along with an inventory feature to help districts in planning facilities upgrades. The facilities tracking system would include the inventory and infrastructure information for each district. As of 2019, not all districts have entered all of their facilities information into KFICS.

The district facility planning (DFP) process requires public input and transparent processes in establishing district construction priorities; regulation requires LPCs to prioritize critical needs, life safety, and compliance with the Americans with Disabilities Act of 1990 (ADA); however, other projects not related to critical needs, life safety, or ADA compliance can be addressed first. The Kentucky School Facility Planning Manual

describes how districts must prioritize their facilities projects. The planning manual lists five priorities (priorities 1, 2, 3, 4, and 5) that schools must use to categorize their facilities projects. Selection of projects are local board of education decisions. Priority 1 projects are to be addressed in the budget biennium in which the DFP was approved. Priority 2, 3, 4, and 5 projects can be addressed in any subsequent biennium. Priorities 1 and 2 are further subdivided into subpriorities a through f.

Unless using School Facilities Construction Commission (SFCC) offers of assistance, which is less than 20 percent of all facility revenue, districts are not required to strictly observe priorities established by DFPs or to address critical needs, life safety, or ADA issues first. With Kentucky Department of Education (KDE) approval, districts can address priorities 1 through 4 in any order. Districts financing projects with general fund dollars are encouraged, but not required, to follow DFP-established priorities. Districts are highly accountable to the public in establishing priority projects but relatively less accountable in prioritizing projects within a priority and ensuring that critical needs, life safety, and ADA compliance are addressed before initiating less critical projects.

District facilities needs are based on DFPs and are used to inform the General Assembly and to determine SFCC offers of assistance. The report found that districts' facilities needs have increased by \$3.5 billion (72 percent) over the last 10 years. There is also a large variation among districts in reported per-pupil need; districts with greatest reported per-pupil need are all smaller districts.

Because SFCC offers of assistance are dependent on districts' need calculated on DFPs, it is important that facilities need data be comparable over time and among districts. Several factors may influence the nature and urgency of need as reported from year to year or among districts:

- Districts can include 15-year old major systems in priority 1c (major renovations to occur in the budget biennium in which the DFP was approved) or 2c (major renovations to occur after the budget biennium in which the DFP was approved), regardless of whether assessments indicate that they need to be replaced.
- Variation among districts in the degree to which they itemize all 15-year old system in priorities 1c or 2c will affect their relative need.
- The majority of projects listed by districts in priority 4 in 2010 remained on plans in 2020; management support buildings such as bus garages or central office buildings greatly increase per-pupil need in smaller districts.

Intended to provide objective, reliable, up-to date data for all school buildings; these data would be helpful given likely variation in the projects individual districts choose to put on DFPs. In a report to the LRC, KDE stated that a majority of schools would be included in KFICS by 2019; while entries increased substantially in the last year, as of September 2020, the KFICS included less than half of school buildings. KRS 157.420(1) requires KBE to create a regulation for KFICS; no regulation exists, and KDE has not established a target date for that regulation. The facilities planning manual has not been updated since 2008 and does not incorporate KFICS; the DFP process and KFICS are currently parallel processes.

The average total budgeted costs for replacement and repair for the 641 schools in KFICS 2020 was about \$4.8 million. Of the total budgeted costs for all schools, 17 percent were considered urgent. The average condition score for school buildings in KFICS is 76 out of 100 in 2020.

Facility funding from local and state sources increased by 1.4 percent from 2008 to 2019 when adjusted for inflation; this is driven primarily by additional nickel taxes levied by districts, in particular the recallable nickel tax. The report found that local funding when adjusted for inflation increased 5 percent, while state funding when adjusted for inflation decreased by 2 percent. Between 2011 and 2019, general funds restricted by districts for future construction increased from \$324 million to \$581 million (79 percent).

While facilities revenue has increased slightly when adjusted for inflation, expenditures have decreased. Between 2008 and 2017, reported expenditures for school construction in Kentucky decreased by 22 percent and reported expenditures for land and existing structures in Kentucky decreased by 52 percent.

Between 2013 and 2019, 164 districts were allowed by statute and budget language to transfer a total of \$346.7 million earmarked for facilities projects to pay for operating expenses to their general funds.

From 2013 to 2019 overall general fund balances have increased by approximately \$352 million (46 percent). Between 2013 and 2019 the fund balances of districts that transferred funds earmarked for facilities projects increased by a total of \$338 million. The fund balances of districts that did not transfer funds earmarked for facilities projects increased by \$14 million.

The per-pupil funding gap between the top 5 percent and the bottom 5 percent of districts has increased from 2008 to 2019. In 2019, the top 5 percent of districts received approximately 1.9 times more funding per pupil than the bottom 5 percent of districts.

Local revenue from additional nickel taxes levied by districts is the primary driver of unequal per-pupil revenue. On average, districts that collect additional nickel taxes make more capital funds requests per pupil than do other districts. Also, smaller and less wealthy districts receive more SFCC offers of assistance per pupil than larger, wealthier, districts.

The state's six wealthiest districts, including Jefferson and Fayette counties, are not eligible for state equalization on nickel taxes because of their high per-pupil property assessments; these six districts do not levy additional nickel taxes that could be equalized and therefore receive less facility-specific revenue than do most other districts. They may finance facility projects, in part, through general fund dollars levied from other local taxes.

In the course of reviewing data, OEA staff observed a number of issues associated with data integrity or compliance with regulations. KDE approved facilities projects that were not included in district facility plans. Some approved projects used restricted funds that may not have been permissible.

In approving 2020 DFPs, KDE miscalculated some districts' need. In total KDE miscalculated the total facilities need by \$25 million less. One district's calculated need was understated by \$7.7 million and another district's calculated need was overstated by \$13.6 million.

In reporting total unmet need to SFCC, KDE factored in district bonding potential that was unable to be transferred to other districts. This led to the total unmet need for the state being overstated by \$66 million. The report found that district completion of BG-5 forms are not timely and because of coding errors, KDE misreported some expenses to the National Center for Education Statistics.

The report makes 10 recommendations:

Recommendation 1.1

If it is the intent of the General Assembly that the Kentucky Inventory and Classification System (KFICS) include complete and up-to-date data on the condition of Kentucky school buildings, then the General Assembly should consider establishing a deadline by which districts must complete KFICS data for all school buildings.

Recommendation 1.2

The Kentucky Board of Education should promulgate an administrative regulation to implement the standardized process for evaluating the overall quality and condition of all school buildings across the state as required by KRS 157.420.

Recommendation 2.1

The Kentucky Department of Education should examine building systems data to determine whether building systems need to be replaced every 15 years.

Recommendation 2.2

The Kentucky Board of Education should consider reviewing which priorities are included for unmet need and allowed to be used for School Facilities Construction Commission (SFCC) offers of assistance. Since districts rarely use SFCC funding on priority 4 projects, one consideration could be using only priority 1, priority 2, and priority 3 projects in the calculation of unmet need and requiring that SFCC offers of assistance can be used only on these same priorities.

Recommendation 2.3

The Kentucky Department of Education should ensure that district facilities plans accurately reflect the total costs of districts' facility's needs.

Recommendation 2.4

The Kentucky Department of Education should not include local bonding potential in excess of local facilities needs in calculating the total state unmet need.

Recommendation 2.5

In approving BG-1s, the Kentucky Department of Education should ensure that districts are using restricted funds only on projects that are listed on the districts' facilities plans and that qualify for restricted funding use.

Recommendation 2.6

The Kentucky Board of Education should consider adding a requirement to 702 KAR 4:160 to have all BG-5s completed within 60 days of completing the BG-4 document.

Recommendation 3.1

The General Assembly may want to refine the parameters of eligibility for capital funds requests or suspend these requests due to the increase in and the total amount of facilities needs in Kentucky.

Recommendation 3.2

The Kentucky Department of Education (KDE) should work with the National Center for Education Statistics to start including negative amounts on annual financial reports (AFRs) when calculating expenses from AFRs. In addition, KDE should work with districts to correct accounts that are set up incorrectly according to the KDE Chart of Accounts.

2021 Approved Study Topics

1. The annual District Data Profiles, a one-stop source of comprehensive district-level education data, including comparative data for all districts.
2. Nontraditional Instruction Program- Beginning in 2011 with the Non-Traditional Instruction (NTI) pilot, Kentucky districts that missed an excessive number of days of school due to weather or other emergencies have had the opportunity to conduct school through virtual or other non-traditional means on days that the district would have normally had to call school off. Since 2014, all districts have been able to utilize non-traditional instructional days and all districts participated in NTI during the COVID-19 pandemic. This study will include a thorough examination of the efficacy of the program. This would include studying its impact on attendance and student performance. Comparisons to similar programs in neighboring states' programs and approval processes will be included.
3. Support Education Excellence in Kentucky Program – This study will examine how Support Education Excellence in Kentucky (SEEK) and SEEK transportation funding is distributed to districts. Issues of equitable funding between districts, regions, and rural vs. urban areas will be considered as well as the local contributions that are made from districts. The study also will include how other states distribute education funding.