

2022 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).

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 one 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 478 written complaints in 2022 (249 of these were anonymous). In 2021, OEA received 363 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 2022.

Table 1.1
2022 Investigations

	Opened	Closed	Pending
Investigative	33	24	21
SBDM	4	7	4
Total	37	31	25

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 Department of Education 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 COVID concerns, forcing OEA to work cases remotely by telephone. However, OEA was cleared to resume onsite visits in 2021. Any local district concerns with masking and social distancing will still 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 district 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.

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.

Effective July 14, 2022, councils no longer hired principals, as that hiring is done by the superintendent, after consulting with the council. KRS 160.345(2)(i)11 contains a description of meaningful consultation between the school council and the principal. The same consultation characteristics (meetings, timelines, review of applications, interviews), should apply to consultation between the superintendent and the council.

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, 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.

Effective July 14, 2022, councils no longer had a curriculum determination and development policy, as the superintendent is empowered to select school curriculum after consulting with the local school board, principal, and school council. However, the council will still have a policy regarding responsibility for school writing policy pursuant to KRS 160.345(2)(i)1 and KRS 158.6453(19).

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, be consulted regarding textbooks and instructional materials, 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, 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 and five full-time research analysts. In 2022, OEA was awarded a Certificate of Impact by the National Conference of State Legislatures (NCSL) for its 2019 report "An Overview of School Counselors in Kentucky." In 2023, OEA was awarded a Certificate of Impact by NCSL for its 2021 report and interactive feature "Funding Kentucky Public Education: An Analysis Of Education Funding Through The SEEK Formula."

In 2022, OEA completed the following studies. Each has been published and can be found on the LRC publications website.

Kentucky District Data Profiles School Year 2021; Research Report No. 475

This report provides a comprehensive overview of all public school districts operating in the state during 2021. The report includes longitudinal data covering district trends, finance, staffing, and school performance from fiscal years 2018 to 2021. 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:

- 2021 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 2021 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.

A Review Of School Funding Adequacy Studies; Research Report No. 480

This study reviewed the most recent studies measuring the cost of an adequate public education in Kentucky and similar states. It focused on the methods used in those studies, the outcomes of those studies, and the costs associated with educating special student populations.

In 1989, the Kentucky Supreme Court concluded that “the total local and state effort in education in Kentucky’s primary and secondary education is inadequate and is lacking in uniformity.”ⁱ The court also stated that the General Assembly shall provide funding sufficient to provide each child in Kentucky an adequate education. The court further stated that substantial additional money would be required, but it did not decide how much funding was needed to provide an adequate education; however, the new system was to ensure that students become “sufficient” in seven capacities. On the basis of this definition, it would have been difficult to perform an adequacy study to determine how much money is needed for all students to reach sufficiency in these seven capacities.

The report defined *adequacy* as a methodology used to estimate the cost of providing an adequate public elementary and secondary education.

The professional judgment approach relies on teams of teachers and other education professionals to identify resources needed to meet state standards and to educate students with special needs, such as special education students and students who are at risk of failing. The advantages of this approach include that it is easy to articulate, that expert opinions are valuable to policymakers, and that panelists account for special needs of students. Disadvantages include that costs are not linked to outcomes, that costs are often overstated, that there may be a conflict of interest among participating educators, and that this method is not based on research.

The evidence-based approach uses research as the basis for identifying resources needed to deliver an adequate education. Advantages include the foundation on educational research and knowledge, as well as the use of educational experts. Disadvantages include that findings can be outdated, that costs are not easily linked to outcomes, that prototypical schools can lead to different cost estimates, and that experimental study to test reform can be limited.

The report compares Kentucky with similar states, including West Virginia and Tennessee. Kentucky is demographically similar to these states, but education spending and student outcomes are different. Compared to Tennessee, Kentucky spends more per pupil and less on education as a percentage of state expenditures, but student outcomes are similar. Compared to West Virginia, Kentucky spends less per pupil and more of its state budget on education, but performs better on student performance measures.

The report reviewed nine adequacy studies in Kentucky and comparable states and found that each determined that additional funding would be needed in order for states to reach adequacy. The Wyoming legislature contracted with Picus Odden & Associates to recalibrate its state education funding model every 5 years since 2005, with three additional studies reviewing school funding elements. Wyoming’s legislature incorporated or adapted some recommendations

and did not implement other recommendations. Between 2006 and 2019, per-student revenue increased, but Wyoming did not reach its accountability goals, and several measures of student performance have declined.

Four adequacy studies have been performed in Kentucky. The most recent study was *Adequacy For Excellence In Kentucky*, an evidence-based model (EBM) conducted by Picus Odden & Associates for the Council for Better Education in 2014. This report estimated that an additional \$2.44 billion would have been needed in school year 2013 to help all districts reach adequacy, although the model excluded federal funds. In an examination of the report, several concerns emerged regarding applying recommendations from that report to Kentucky:

- The 2014 Kentucky EBM is a resource allocation model that provides funding based on resources needed. Kentucky uses a guaranteed base per-pupil amount adjusted by add-ons for special student groups and a transportation formula. These funds are not required to be spent on specific students or identified needs, whereas resource allocation models require that funds be spend on particular resources.
- Recommendations cannot be compared to current actual costs in Kentucky to calculate how much education funding would need to change to implement model recommendations.
- Many elements lack supporting evidence.

The report outlined some general concerns regarding the EBM model including:

- The model does not guarantee results or set a time frame for achieving results.
- Recommendations may not fit Kentucky policy preferences.
- Use of carried-forward costs assumes that these elements are adequate, which is not addressed or determined by the model and may not be accurate.

A professional judgment study published in 2004 estimated that an additional \$1.1 billion (in 2004 dollars) was needed to adequately fund Kentucky education. A professional judgment study published in May 2003 estimated an additional \$1.6 billion. A fourth study was published in February 2003 and was not reviewed because of its similarity to the May 2003 study.

In addition to the study, OEA produced a memorandum detailing which states use membership in their school funding calculations, the manner in which membership is determined, and the estimated costs of using membership in the SEEK calculation instead of average adjusted daily attendance. This memorandum was submitted in writing to the EAARS in January 2022.

Credit Recovery In Kentucky: Advantages And Drawbacks; Research Report No. 479

Credit recovery enables students who fail courses to recover the credits they need to graduate from high school. There is no commonly accepted definition of *credit recovery* in the commonwealth or the nation, but it is usually associated with flexible course methods that focus more on content mastery than on seat time and have advantages over traditional course retakes in accommodating students' schedules and particular learning needs. Credit recovery has been a subject of national debate. Proponents consider it a critical tool in helping students

persist to graduation, but critics have raised concerns about the quality of learning in credit recovery courses.

This study used data from the Kentucky Department of Education (KDE), an Office of Education Accountability (OEA) 2022 survey of Kentucky high schools, and eight OEA site visits to report:

- rates at which students recovered credits for failed courses by any method through the 2019 school year¹;
- rates at which students were enrolled in specific types of credit recovery courses in the 2022 school year;
- credit recovery practices and policies; and
- Kentucky educators' views of the strengths and drawbacks of credit recovery.

Digital courses—in which students receive instruction entirely or primarily through software—were the most prevalent method by which students recover credits in the commonwealth. Compared with teacher-taught, direct instruction courses, digital courses were relatively less understood by policymakers and administrators, and they were less regulated.²

The study found that credit recovery offers advantages and drawbacks, both of which are most likely to affect students who must recover multiple credits. Drawbacks can be addressed through local supports and strong state and local policies. Credit recovery policies do not exist at the state level or in most Kentucky districts and schools. Administrator support and monitoring of credit recovery programs varies among schools and districts.

Recommendations of the study focus on strengthening state-level credit recovery policies and data standards generally, developing a regulation for digital learning courses, and incorporating audits of districts' digital learning programs into KDE's cyclical audits.

Credit recovery affects a substantial minority of Kentucky students. Almost one-quarter of 2019 on-time graduates in Kentucky recovered one or more credits over their 4 years in high school, and almost 10 percent recovered at least three credits. Students who recovered credits—and especially those who recovered multiple credits—were disproportionately from traditionally lower-achieving student groups and were disproportionately enrolled in schools with low graduation rates. According to the OEA 2022 credit recovery survey, rates at which students recovered credits have increased since 2019 as a result of student course failure during the COVID-19 pandemic.

Use of digital learning courses for credit recovery has been increasing in Kentucky and the nation, and they are now the most common way that Kentucky students recover credits. As reported in OEA's 2022 credit recovery survey, all Kentucky high schools offered digital courses, compared with 85 percent that offered traditional, direct instruction course retakes

¹ To examine typical rates of credit recovery, the study analyzed student-level data from 2019 because it is likely to be more representative than data from subsequent years, when course failure increased greatly during the COVID-19 pandemic.

² Digital courses are sometimes referred to as online or virtual courses.

and less than half that offered abbreviated, direct instruction classes (such as have been traditionally offered in summer school). Students recovering three or more credits in 2022 enrolled in digital classes at over 2.5 times the rate at which they enrolled in any direct instruction options to recover credits.

Districts and schools vary widely in their credit recovery practices, including

- adjustment of content in credit recovery courses,
- limits in the grades that can be earned in a credit recovery course versus entire course retake,
- whether initial failing grades are included in student grade point averages (GPAs),
- eligibility of students to recover credits through credit recovery versus course retakes, and
- whether students may take a credit recovery class in a course they have not yet failed.

These variations can affect the comparability of student GPAs among districts and schools and can undermine the validity and reliability of credit recovery data collected by KDE. As noted in the report, current data collection methods are also limited by the way districts indicate credit recovery in student course data versus transcript data.

Variation in credit recovery practices reflects, in part, lack of state-level credit recovery policies in Kentucky and in most districts and schools. Other states have addressed these concerns by requiring districts to have local credit recovery policies and, in some states, by setting state-level guidelines for credit recovery.

As with credit recovery generally, implementation of digital learning credit recovery courses varies substantially among schools. In some districts and schools, students in digital learning credit recovery courses are closely monitored and actively supported; content coverage may be similar to that of traditionally taught classes. In others schools, policies and supports are lacking and instructional expectations can be extremely low. No specific policy safeguards exist to guard against low-quality classes.

No state policies directly address digital learning courses. KDE's Digital Learning Guidelines recommend guiding principles and best practices for digital courses in areas such as content; technology readiness; staffing; leadership and governance; and assessment systems. Because they are not incorporated into regulation, the guidelines do not have the force of law.

School districts are operating under informal guidance from KDE in understanding staffing requirements and other requirements for digital courses. For example, the guidelines note that content-area teachers should review and endorse digital courses and that building-level "course stewards" may oversee implementation of a course if it is provided in the school building and assigned to a content-certified teacher. The guidelines recommend that digital learning students have access to content-area teachers for assistance.

Views of Kentucky educators responding to OEA's 2022 credit recovery survey were consistent with national research in identifying both advantages and drawbacks of digital credit recovery

courses. The overwhelming majority of survey respondents agreed that digital credit recovery courses are flexible in meeting student scheduling constraints; allow students to recover multiple credits simultaneously; permit students to learn anytime, anywhere; provide diagnostic data to target unmastered content; are adaptable for a variety of learners; and are cost effective. In addition, almost half of survey respondents reported that, for some students, digital learning courses are more effective than direct instruction options. Students who may learn better in digital courses than in traditional, direct instruction courses include those with social anxiety or those who prefer working at their own pace. Survey respondents' comments noted the critical role of digital courses in providing credit-deficient students with hope and a viable path to graduation.

The overwhelming majority of survey respondents identified drawbacks related to the quality of learning in digital credit recovery classes. For example, 70 percent of respondents agreed that digital courses may be less rigorous than direct instruction courses. Just under half (49 percent) agreed that digital credit recovery courses prepare students for subsequent course work, less than those who agreed that abbreviated, direct instruction (57 percent) or entire course retakes (84 percent) do so.

Survey respondents also agreed that students taking digital credit recovery classes might click through content without engaging (81 percent) or cheat by obtaining answers to assessments from answer websites or other individuals (85 percent). Despite widely acknowledged risks of student cheating, less than one-third of schools required supervised settings for all students taking assessments for digital credit recovery courses.

Perceptions of lower academic standards in credit recovery classes may also undermine teachers' abilities to hold students to high standards in regular classes. Most (70 percent) of OEA survey respondents agreed that "the perception of digital learning courses as an easy option may undermine some students' motivation to work in regular class."

Although school practices vary, most credit recovery digital learning students complete digital courses in virtual labs or other in-person settings, supervised by school staff who are not necessarily certified in the content area of the course a student is completing.³ Credit recovery teachers in these types of non-subject-specific classes do not typically provide content-related academic support to students. Lack of academic support may be especially concerning for the many credit recovery students with low reading abilities.

Schools can provide supplemental academic support for students in digital learning credit recovery courses by assigning duties to content-area teachers who are not credit recovery teachers. For example, content-area teachers may be regularly assigned to check in with students, to assist students in person or remotely, or to grade assignments (such as projects or essays) that cannot be graded by software. More than 40 percent of survey respondents, however, reported that content-area teachers who are not credit recovery teachers have no regularly assigned duties

³ In contrast, 16 percent of survey respondents reported that most or all students in their schools were in subject-specific credit recovery classes, supervised by teachers certified in the content area of the course being recovered.

to assist with credit recovery classes. In such schools, students may have limited access to content-area teachers for instructional support.⁴

OEA site visit data showed extreme variation among schools in the instructional expectations for students in digital credit recovery courses. In one school and one alternative program, digital courses may have rivaled direct instruction courses in the amount and range of content covered. In two schools, some students earned credit in digital courses in less than 5 hours, having participated in little or no instruction. In one of these schools, all student records analyzed indicated that students received credit without participating in any instruction.⁵

Local leaders play critical roles in maximizing benefits and minimizing drawbacks of digital learning courses. Roughly half of survey respondents answered a survey question requesting examples of school practices that address drawbacks of digital credit recovery courses. Strategies that were reported included

- scheduling regular check-ins or tutoring sessions for content-area teachers and digital credit recovery students,
- requiring students to take notes on instructional units before they are permitted to take a test,
- installing software that blocks answer websites on school computers,
- checking for plagiarized text, and
- identifying students who appear to be guessing at answers.

Some districts and schools have well-developed credit recovery policies that address digital learning credit recovery issues such as student and course eligibility, grading practices, test security, and data review processes, but most districts and schools lack written policies.

Digital learning courses are used beyond credit recovery. An estimated 5 percent of students took digital courses for initial credit in 2019, and digital courses may be used in some of the state's new district-developed, full-time virtual schools. In addition, more than one-quarter of survey respondents reported that students in regular classes are permitted to use digital learning software to replace failed unit grades.

The report made three recommendations related to credit recovery generally.

Recommendation 3.1

The Kentucky Board of Education should consider addressing the following elements of credit recovery in regulation: definition of *credit recovery*; permitted modes of credit recovery (e.g.,

⁴ In addition, digital course content that cannot be machine graded might be entirely eliminated in these schools. In most OEA site visit schools, students taking digital credit recovery English courses were not required to produce any written work.

⁵ In this school, raw student data recorded no minutes associated with instruction. Grading weights were concentrated entirely on assessments. The credit recovery teacher in this school reported encouraging students to skip instructional videos, in the interest of time. Students in the class were permitted to look up answers on the internet and were assisted by the credit recovery teacher when they struggled to answer questions correctly.

digital learning, online classes, direct instruction); and under what conditions, if any, courses for initial credit can be taken through credit recovery.

Recommendation 3.2

The Kentucky Department of Education should consider adding two coding fields to transcript data in the student information system, in order to identify a course as credit recovery and the mode by which the student earned the credit.

Recommendation 3.3

The Kentucky Board of Education should consider addressing in regulation the following issues related to credit recovery: when and how course content can be adjusted; student eligibility for credit recovery; how credit recovery is recorded in transcripts and calculated in grade point averages; and any limits to the total number of credits that can be earned through credit recovery.

The study provides three recommendations aimed at clarifying state-level digital learning policies generally and requiring that local boards develop and implement policies that address the quality of digital learning courses. By incorporating districts' digital learning programs in the department's regular audits, KDE can increase the likelihood that local policies are developed and enforced.

Recommendation 4.1

The Kentucky Department of Education should consider updating its digital learning guidance document to incorporate additional requirements related to staffing definitions and duties, local board policies, and evaluation of digital learning courses.

Recommendation 4.2

The Kentucky Board of Education should consider promulgating a regulation that incorporates an updated version of the Kentucky Department of Education Digital Learning Guidelines by reference.

Recommendation 4.3

The Kentucky Department of Education should consider including audits of districts' digital learning programs in its cyclical audits of local school districts.

2023 Approved Study Topics

The annual District Data Profiles, a one-stop source of comprehensive district-level education data, including comparative data for all districts.

Classified and Certified Staffing Shortages – This study will examine classified and certified staffing in Kentucky school districts. The study will examine various indicators of classified and

certified staffing shortages during recent years and what districts have done historically to recruit and retain classified and certified staff. In addition, OEA staff will review what Kentucky and other states have done to recruit and retain employees and address possible shortages in developing career pathways.

Review of Effectiveness and Efficiency of School Districts in Affecting Student's Academic and Postsecondary Outcomes – KRS 157.310 states that it is the intention of the General Assembly to provide an efficient system of public schools as prescribed in the Kentucky Constitution and to assure substantially equal public school educational opportunities for students. KRS 158.645 delineates the capacities the General Assembly intends all students to acquire within the public education system. This study will conduct a longitudinal analysis of Kentucky school expenditures and outcomes associated with student academic and postsecondary success. Education expenditures will be examined at the state and district level. Elements reviewed will include, but are not limited to, student assessment data, graduation rates, staffing, and postsecondary indicators of success taking into account student and district characteristics.

ⁱ *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 198 (Ky. 1989).