

# **SCHOOL FUNDING TASK FORCE**

## **Minutes of the 5th Meeting of the 2021 Interim**

**October 18, 2021**

### **Call to Order and Roll Call**

The 5th meeting of the School Funding Task Force was held on Monday, October 18, 2021, at 10:00 AM, in Room 149 of the Capitol Annex. Senator Max Wise, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Max Wise, Co-Chair; Representative James Tipton, Co-Chair; Senator Reginald Thomas; Representatives Kim Banta, Tina Bojanowski, and DJ Johnson.

Guests: Chay Ritter, Division of District Support Services, KDE; Todd Allen, General Counsel, KDE and SBE; Chuck Truesdell, KDE; Mike Borchers, Ludlow, KY, Robbie Fletcher, Lawrence County, KY; and Davonna Page, Russellville, KY.

LRC Staff: Joshua Collins, Cynthia Brown, and Christal White.

### **Nonresident Student Funding and Additional Discussion of School Funding**

During the 2021 Regular Session, the General Assembly passed House Bill 563 which included a provision allowing nonresident students to be included in a district's average daily attendance (ADA) for the purposes of receiving state SEEK funding. The responsibilities of the School Funding Task Force include receiving a report from the Kentucky Department of Education (KDE) regarding recommendations on how local funds may follow nonresident students. Presenting for KDE were Mr. Chay Ritter and Mr. Todd Allen.

Mr. Ritter said KRS 157.350 permits districts to include nonresident students in Average Daily Attendance (ADA) under a written agreement between a nonresident and resident district. ADA determines funding for SEEK funds, state formula grants, and some federal grants. As districts receive nonresident students, coding in the Infinite Campus system keeps track of the students in the districts.

By July 1, 2022, HB 563 mandates school districts must adopt policies governing the terms under which the district shall allow enrollment of nonresident pupils. Districts may include nonresident pupils admitted under the policy in the ADA calculation, no longer requiring a nonresident agreement.

Local tax revenue recommendations include tax rates set by the local boards of education. Property taxes, permissive taxes, utilities taxes, occupational taxes, and excise taxes are collected locally by school districts or the Kentucky Department of Revenue (KDOR). Tax collection rates vary by district and KDE has no control over local revenues. Funds collected by KDOR are sent directly to districts.

Responding to a question from Representative Tipton, Mr. Allen said the recent court decision did not litigate the educational opportunity portion of HB 563 and failed to address the portion of the bill relating to the transfer of nonresident funds from one district to another. He said the courts final order declared the entirety of HB 563 unconstitutional, although the plaintiffs only questioned the legality of particular sections of the bill. Mr. Allen said the courts may enter clarifying language but based on the courts language and order, HB 563 is currently declared unconstitutional. Representative Tipton indicated the litigation may be appealed or sent to a higher court where the final outcome will be known.

Responding to a question from Representative Tipton regarding the Office of Education Accountability (OEA) presentation last week, Mr. Ritter said district SEEK funding is reduced by 30 cents per \$100 of the property assessment. As a district's property assessment grows, the deduction grows, and SEEK funding is reduced. OEA's hypothetical example of increasing local effort from 30 to 35 cents provides a higher amount for the reduction in SEEK and changes the dynamic between local and state funding. A larger portion of local funding would be reduced from state funding by default. Currently, every district currently has tax rates above the 30 cent minimum.

In response to a question from Senator Thomas, Mr. Ritter said as local effort increases due to increased property assessments, the amount of SEEK funding decreases. He said districts with decreasing property values will ultimately receive additional SEEK funding.

Mr. Ritter presented four options for how local funds could follow a student to another district. The first option would be the current status quo where local funds stay in the community in which they are levied and are not transferrable. The second option would be the transfer of local funds from the resident to nonresident district. However, there could be issues with Kentucky Constitution Section 180. The third option would be an adjustment of SEEK where the state could use state funds to credit the district where the student is attending and deduct from where the student resides. However, this could have issues with the constitutional responsibility of providing adequate funding. The last option would be designating a separate appropriation equal to the local per pupil revenue for the enrolled district. This could take the form of an add-on. This could encounter a timing issue because the state looks at last year's data to calculate funding, causing a delay in funding.

Responding to a question from Mr. Fletcher, Mr. Ritter said a higher property valuation increase is more beneficial to a school district than the resulting cut in state SEEK

funding. The property value increase and district SEEK decrease are not dollar for dollar. Actual tax collection may be less than the calculated property value increase due to contests and adjustments. Mr. Fletcher noted that the benefit in property valuation increase is reflected by the discrepancy in equity between property rich districts and property poor districts.

In response to a question from Mr. Borchers, Mr. Ritter said some districts require nonresident students to pay tuition under different circumstances. Mr. Allen indicated that there may be issues regarding tuition. Citing *Rose v. Council for Better Education*, Mr. Allen said the Kentucky Supreme Court required common schools to be free. He said that under that thinking, schools receiving common school funds should not be charging tuition. A statute provision allows a school district to have a tuition arrangement with other school districts for nonresident students. Mr. Allen said that charging tuition to a parent would not be free at that point and seems to violate the language that is clear from the Supreme Court.

Ms. Page said school boards levy taxes to operate schools within its districts and that she foresees difficulty in raising taxes if the money will be transferred to a different district.

Mr. Ritter proceeded to discuss the possibility of switching from using ADA to average daily membership (ADM) in the SEEK funding formula. ADA is generally calculated as the total number of student attendance days divided by the total number of days in the school year. KDE's legacy SEEK computer program stores ADA and other SEEK data for each district.

Within that ADA calculation, kindergarten students were previously funded at one half of the ADA allocations; however, the General Assembly recently allowed full kindergarten funding for the current school year. That has now been adjusted in the calculation. Additionally, pursuant to regulation, over-age and under-age students do not qualify and are removed from the data. There are also adjustments for low attendance days, low attendance weather days, and non-traditional instruction days. All of this data is combined to develop a district's ADA.

ADM is an enrollment count of the average number of enrolled students over a certain period of time. In reviewing other states, the ADM can be an average daily count throughout the entire school year, part of the school year, a single day count, a multi-day day count in the spring and fall, or enrollment count periods over single or multiple days.

Key considerations in implementing ADM are: accuracy, predictability, budget stability, and transitioning from ADA to ADM. Currently, SEEK has a hold harmless position to create a floor for funding to prevent a handful of districts from financial fall. A similar feature may be needed if ADM is implemented. KDE logistically figures out the

least harmful way to implement but also obtains quality data for student counts to ensure districts receive accurate funds.

Responding to a question from Senator Wise, Mr. Ritter said KDE would need some time in transitioning from ADA to ADM, to communicate the changes with districts, training, and testing district employees on the new system. Mr. Ritter said a cycle of one year should be sufficient to confirm accurate and auditable information. He said current year data becomes an issue if a student is transient on a regular basis.

Mr. Fletcher, referring to the OEA report, said approaching a change to ADM needs to look at adequacy and equity. His concern is that, without additional funds, some districts would experience an increase and others a decrease in funding, creating winners and losers. If the budget is increased and approached from adequacy, every district should experience an increase.

Responding to a question from Senator Thomas, Mr. Ritter said ADA is attendance driven and ADM is based on enrollment and attendance is irrelevant.

Representative Banta indicated she is leaning toward an ADM model due to the pandemic. She said encouraging kids to come to school sick is troubling. She also said that the cost associated with locating students is enormous and creates more work for teachers causing absent students to cost a district as much as when present. Transient students also cost districts money and time but are not funded under ADA. She said bringing SEEK up to the cost of living would provide a fair budget regardless of changing weights or models. Senator Wise encouraged Representative Banta to use this charge in the recommendation phase.

Representative Tipton echoed Representative Banta's comments and said the COVID pandemic has caused attendance to become an issue. He cautioned the committee to set an effective and adequate long-range policy going forward. He agrees district costs are present regardless of student attendance and encouraged the task force to find an effective policy moving forward with ADM, but that such a policy should have a smoothing effect or hold harmless for those districts that are reducing in size.

Mr. Borchers said a district plans a budget based on the district's student membership and not only the ADA.

Mr. Truesdell, also in strong agreement with Representatives Banta and Tipton and Mr. Borchers, said a huge amount of time and energy has been exhausted over the years on how to count attendance rather than focusing on instruction models that will benefit students. He said the transition to ADM would allow a focus on student needs. Additionally, Mr. Truesdell said that a change to a resource based model and how to pay for it may be expensive, but it is crucial.

Senator Thomas offered a dissenting opinion. He said the 2015 performance funding model for postsecondary education emphasized getting students to complete college and fears the ADM model will not focus on student attendance. Responding to Senator Thomas' comments, Representative Banta said teachers will work hard on student attendance with an ADM model.

Mr. Truesdell said when looking at district attendance, low attendance is a proxy for low poverty and social economic status. With funding based on attendance, districts are being punished with a large number of students in those gap groups. He said the ADM is a positive first step to get to true equity. Senator Thomas said addressing poverty and equity issues must include funding early childhood education and keeping students in school.

Mr. Ritter discussed the pros and cons of ADA. He said attendance will always be tracked for security, health, and safety reasons and creates an administrative burden regardless of the model. Fixed costs in districts remain the same even with fluctuation in attendance. ADA provides an incentive to boost attendance and favors districts with higher attendance rates. ADA is also used in federal reporting and state needs. The cons of ADA are chronic absenteeism caused by issues beyond the school's control, such as: poverty, chronic health issues, and other community-related factors. Using attendance can also penalize districts that serve more disadvantaged students and spread resources over a larger group of students. Although the ADM funding amount will appear lower, more students can result in the same amount of funding dollars.

Responding to a question by Representative Tipton on OEA's report on transportation funding, Mr. Ritter said KDE sometimes has differing opinions on OEA recommendations or findings. He said if mistakes are being made in the formula, KDE's sole job is to make sure it is accurate. KDE has been moving to make those changes immediately and are working to ensure accurate calculations for each district. KDE realizes the seriousness of providing accurate data. KDE always takes advice under consideration, is open to areas of improvement, and makes sure all issues are resolved.

In response to a question by Representative Tipton, Mr. Ritter said state-wide equalization of full funding for kindergarten will be extremely important moving forward and will be in the calculation for the upcoming budget if kindergarten is fully funded. Mr. Truesdell explained that the equalization level is set during the budget process and is derived from the property assessment numbers in the first year of the biennium. Like all SEEK items, the equalization level has a self-correcting mechanism. Going forward, including all kindergarten students will resolve the issue.

### **Discussion of Possible Recommendations**

Senator Wise called for the discussion of possible task force recommendations.

Representative. Bojanowski requested that OEA perform an evaluation based on poverty to include federal funds prior to making an official recommendation to the task force. She recommended before changing the SEEK formula there should be a task force on the adequacy and goals of public education with an objective to study the number of special education and at-risk students and determine how the numbers impact education.

Representative Banta agreed with Representative Bojanowski. She recommended the SEEK funding be adjusted to the current cost of living while the requested studies are being performed.

From a superintendent's standpoint, Mr. Fletcher recommended funding for full-day kindergarten. He also recommended fully funding transportation because it would impact almost all districts. Additionally, he recommended a hold harmless provision for school districts so that adjustments made to the SEEK formula do not negatively impact the funding of any school district.

Ms. Page agreed with full-day kindergarten funding and transportation costs being fully funded. She recommended to increase equity in funding school districts by adding foster care children as an add-on in the SEEK formula as outlined by the OEA report. She also recommended: adjusting the SEEK base to account for inflation, adding an upward adjustment for the add-on for Limited English Proficiency students, and increasing funding across all districts in the Commonwealth. She said teacher salaries have not kept up with inflation.

Mr. Truesdell agreed with recommendations for full-day kindergarten funding, fully funding transportation, and including an add-on for foster care children in the SEEK formula. Mr. Truesdell suggested the weights of the SEEK formula add-ons be reviewed through a study on actual additional costs for possible adjustments and recommended that the SEEK formula needs to be reviewed so that it reflects the funding needs for every student and not just funding districts. He recommended making sure all facilities are equitable in every district, including career and technical education. Mr. Truesdell suggested the mandates for the resources in 2019 RS SB 1 be fully funded.

Representative Tipton reviewed the responsibilities and jurisdiction of the task force.

The next meeting of the School Funding Task Force will be November 8, 2021.

There being no further business before the committee, the meeting adjourned at 11:30 a.m.