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Governor

Terry Holliday, Ph.D.
Commissioner of Education

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
DEPARTMENT OF EDUCATION

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March 21, 2013

Diane Porter, Chair
Jefferson County Board of Education
P.O. Box 3921
Louisville, KY 40201

Donna M. Hargens, Ed. D., Superintendent
Jefferson County School District
3332 Newburg Rd.
P.O. Box 34020
Louisville, KY 40232

**Re: Collaboration on improving low-performing schools**

Dear Board Chair Porter and Superintendent Hargens:

Thank you for the continued expression of the need to collaborate in the coordinated improvement of your district's low-performing schools. As you know, the education of children is our collective goal and we welcome the opportunity to provide guidance and support to your district as you make this goal a reality for the students of your district. It is our desire to continue the spirit of collaboration that has been in place since the beginning of Superintendent Hargen's administration in August 2011.

As part of that support, I am providing a review of the legal requirements governing the district's turnaround efforts. As stated in the Rose decision, "The [Kentucky Constitution requires that the] system of common schools [in our state] must be substantially uniform throughout the state. Each child, every child, in this Commonwealth must be provided with an equal opportunity to have an adequate education. Equality is the key word here." As chief state school officer, it is my duty to ensure that each child, every child, in our state is provided this equal, and at the very least, adequate opportunity for education. It is my duty, under Kentucky law, to report to the Kentucky Board of Education "any mismanagement, misconduct, violation of law, or wrongful or improper use of any district or state school fund, or neglect in the performance of duty on the part of any official" pursuant to KRS 156.210. It is my duty to ensure that the districts are following the requirements of Kentucky law and to certify that this is true. It is also my duty to withhold funding from districts that do not meet the requirements of Kentucky law, pursuant to KRS 157.410. More specifically, when a school meets the definition of a "persistently low-

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achieving school" under KRS 160.346, it is my charge to devote staff to audit the school and district to provide information for me to consider and determine whether the school and district possess the ability to manage the intervention required to turn around the persistently low-achieving school.

Kentucky regulation 703 KAR 5:180 provides the specifics regarding the intervention options available to the school and the district. As you know, federal law as well provides requirements regarding the school and district turnaround efforts due to the district's application and receipt of School Improvement Grant (SIG) funds. The district's continued receipt of SIG funds is of course contingent on compliance with those requirements. Most relevant to previous conversations with your district and its union is the federal and state law requirement prohibiting any terms of a bargained contract from prevailing over the federal and state law requirements for turnaround. I have enclosed the Kentucky Office of the Attorney General's recent response to the Jefferson County Teachers Association's (JCTA's) request for an opinion on this very issue for your convenience.

Next, I am providing the following summary of improvements that have occurred as well as challenges to improvement efforts:

Improvement Highlights

- Intentional actions have been taken by Superintendent Donna Hargens to address issues regarding assignment of staff in Priority Schools.
- Increased collaboration has occurred between Kentucky Department of Education (KDE) and Jefferson County Public Schools (JCPS) area superintendents as evidenced by 38 face-to-face meetings held with Education Recovery Director Dr. Debbie Powers and numerous phone calls and meetings with Associate Commissioner Susan Allred.
- The Kentucky Department of Education (KDE) has also seen several schools move out of the bottom 5%.
- Education Recovery Director Debbie Powers reports that education recovery staff, area superintendents, and principals are receiving weekly communication through the "Monday Monologue", the forwarding of interesting articles and research, and the availability of Dr. Powers 24/7.
- Collaboration with KDE and the Council on Postsecondary Education is ongoing to form a pipeline for building turnaround principals through the National Institute for School Leadership (NISL).
- An improvement of district level college and career readiness (CCR) has occurred through an intentional focus on CCR for all students.
- Class of 2012 graduation results for several low performing schools have improved.

Challenges to Improvement Efforts

- While KDE does have concerns about JCPS' implementation of turnaround efforts, it is also very apparent that KDE has not always been consistent in expectations, monitoring and support for JCPS in the implementation of turnaround strategies.

- Although the district has a clear strategic plan, it is not clear from the state mandated Comprehensive District Improvement Plan (CDIP), submitted in February, as to the vision for Priority Schools. Moreover, it is not clear from the CDIP as to the specific strategies that will be implemented in the district to support the Priority Schools and address the lack of progress in graduation rate and college/career ready targets required by the state. Also, the CDIP does not clearly address how the district will assist Priority Schools in implementing strategies that address indicators from the diagnostic/leadership audits conducted by the state.
- The district has not provided professional development in turnaround strategies for principals and/or assistant principals in Priority Schools nor have assistant superintendents received district training in specific turnaround strategies. Specific details include:
    - ✓ Cohort 2 high schools were pulled together last year four or five times by Joe Burks to work with two professors at the University of Louisville with whom he was working. He directly paid for that work for the Cohort 2 principals. The lone middle school, Knight, was excluded from that work. Although this initiative directed by the district occurred, no professional development provided by the Center of Learning Excellence (CLE) at the University of Louisville was approved by the district.
    - ✓ All middle school principals in the 2011-2012 school year did undertake a year-long study with the Saffir group on The Skillful Teacher. It was an excellent professional development undertaking and included resource teachers and coaches. However, that initiative was dropped this year and there has been no follow-up.
    - ✓ At the request of Dr. Dewey Hensley, Dr. Blake Haselton of the University of Louisville put together a proposal for the University of Louisville to work with assistant principals during this school year and it was written into the CLE's working budget. However, the work was never approved.
    - ✓ Other than the principal meetings the district holds regularly, this year there has been no targeted professional development for principals of Priority Schools provided by the district.

- It is not clear how the district is providing additional support and resources to Priority Schools in areas such as human resources and staffing, transportation, student assignment, budget oversight, and physical plant needs.
- It is not clear how the district is providing direct oversight of SIG applications, budgets, and implementation/impact assessment of SIG grants and improvement plans. It is a concern that area superintendents lack this expertise and in most cases principals in these schools are new to the principal position and lack this expertise.
- The current Cascade system, while an excellent system, is not being implemented with fidelity across the Priority Schools.
- It is not clear how the district will sustain support for these schools when various grants (SIG, I3, SLC, etc.) end.

- From the school district and Priority Schools, no follow-up for design and implementation has occurred relative to assistance from the University of Louisville's Center for Learning Excellence (CLE) in terms of professional development and on-site support from the Chief Academic Officer. No action was taken on a proposed leadership institute for assistant principals, no action was taken on systems training work, and no action was taken on an instructional leadership proposed institute.
- The current education recovery specialists and leaders have been limited by perceived contract issues which limit the ability to support and interact with teachers as evidenced by the lack of ability to impact lesson plans, provide job-embedded professional development, and coach teachers for instructional improvement.
- It is not clear that schools are consistently using the 30/60/90 day plans to make changes based on data and information as the guide for continuous improvement.
- While KDE has attempted to implement educational recovery re-staffing and transformation models, it is not clear how effective the models have been in increasing graduation rate, CCR, math and language arts performance. It is also not clearly understood in all Priority Schools what the role of the education recovery staff is in relation to school leadership and implementing the re-staffing and transformation models.
- Turnover has occurred in the education recovery staff making sustainability of processes a challenge.

Additional issues for consideration were cited in the Office of Education Accountability's Research Report No. 378 titled "Assistance to Low-Achieving Schools and Districts: Strengths, Limitations and Challenges". On pages 50-56, the report cites that the re-staffing option yields inexperienced teachers (three years or less), turnover (contracts allowing experienced teachers the first right to transfer) and the difficulty of removing ineffective teachers from low-achieving schools.

In order to turn this situation in the district and the Priority Schools around, KDE is providing the following expectations and recommendations for moving forward:

<u>Expectations</u>

- Revise the CDIP to clearly establish vision, goals, and strategies for supporting Priority Schools. The current district strategic plan already has an excellent basis for this work in Goal 3 and measureable objective 1. The superintendent or her designee will meet with the state recovery director on at least a quarterly basis to review progress of Priority Schools.
- KDE will increase the level of expectations, monitoring and support for Priority Schools through quarterly progress updates by JCPS leadership and continuation of existing strategies.
- The district will provide assurances that concerns from the Office of Education Accountability Report have been addressed.

- Schools will sustain the development, implementation, monitoring and reporting on 30/60/90 day plans and the district will provide one main point of contact to review these plans with the area superintendents and education recovery director.
- The district will address current perceived contract barriers such as stipulation that seniority is the priority basis for the determination of assignment of teachers to courses/students; the limitation of one hour of after school time per week for meetings; exclusion of Professional Learning Community (PLC) work from embedded support, planning and collaborative data analysis and related rigorous lesson planning; the assumption that a professional observing in a classroom for the purpose of learning to assist a teacher in developing better lesson plans and improving classroom strategies is considered an evaluation as opposed to coaching; and flexible professional development that enables a teacher to choose three professional learning days of his/her choice that does not limit the amount of time available to coach the teacher and/or groups of teachers in areas in which they need to improve. The role of a teacher in a Priority School requires significant amounts of support and training and embedded coaching for meeting the diverse needs of teachers. With the level of inexperience currently coming to the classroom, the current model with these contract stipulations does not set up retention of teachers nor success with challenging populations and their dynamics.
- Continue to address perceived and real restrictions around hiring/placement and acknowledgement that some of this is occurring – seniority, hiring from the overstaff list, hiring from the transfer list, and limitation on hiring from outside the district. Principals must have full autonomy in the hiring of staff.
- In collaboration with the KDE associate commissioner and education recovery director, create a sustainability plan for Priority Schools.
- The education recovery director will ensure that all education recovery staff members know their roles and that leadership in the schools understand the collaborative nature of the model. Education recovery leaders in particular should alert the education recovery director of any movement away from the education recovery protocol (not following the 30/60/90 day plans, meeting in PLCs, using data, etc.).

Recommendations

- Designate a specific district level person or team for Priority School leadership to coordinate the work of area superintendents with other district support services such as transportation, budget, assessment, accountability, personnel and staffing, professional development, and student assignment.
- With collaboration of KDE and JCPS staff, provide professional development to area superintendents, principals, and assistant principals on the required elements of the re-staffing and transformation models that have been approved by the JCPS board.
- Provide additional resources and supports in Priority Schools for parent engagement, community engagement, funding to increase National Board Certified Teachers, student assignment (major concerns with current process for ECE, ESL, and alternative school placement back into the school setting), and liaison and outreach to increase collaboration and business involvement.

- Require instructional leadership teams at each Priority School to attend training and adopt the systems model of school improvement as is currently available through education recovery.
- Consider negotiating a separate JCTA contract for Priority Schools to enable flexibility that is required by both the transformation and re-staffing models to give turnaround principals autonomy and flexibility with resources of time and personnel.
- Utilize to the fullest extent the waiver flexibility granted to districts through the state ESEA waiver to redirect necessary resources to Priority Schools.
- Continue collaboration with the National Institute for School Leadership program to develop a pipeline of well-prepared leaders at the school and district levels to lead the turnaround efforts.

I am confident that you and your district appreciate the urgency and need for turnaround efforts to ensure that all students of Jefferson County are provided an equal and adequate education under a system of efficient schools, as required by the state constitution. As you know, Kentucky law demands that district and school leadership possess the capability to manage the turnaround efforts. If leadership capacity is an issue in any turnaround district, it is my responsibility as chief state school officer to relieve local officials of leadership responsibility pursuant to KRS 160.346 if it is determined that they do not have the capacity for this challenging task. I will review the results from the 2013 school report cards to determine next steps that could include a district leadership audit and/or district management audit focused on Priority Schools' progress.

In the interim, and in hopes of negating the trigger of further action under KRS 160.346, I propose that we enter into an agreement wherein we jointly work to implement changes needed to fully turn around these schools. I will direct KDE staff to assist JCPS staff in this endeavor and you would commit to directing JCPS staff to implement the recommendations contained in this letter including engaging in meaningful negotiations with JCTA that will assist JCPS in achieving these goals. I look forward to working with you to ensure these educational improvements become the reality for your students.

Sincerely,

Terry Holliday, Ph.D.

Enclosure

cc: Kevin C. Brown, KDE
Susan Allred, KDE

TH:mam

COMMONWEALTH OF KENTUCKY
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September 22, 2011

Mr. Don Meade
800 Republic Building
429 West Muhammad Ali
Louisville, KY 40202

Dear Mr. Meade:

Thank you for contacting the Office of the Attorney General. Although this letter is not a formal opinion of this office, we hope the views expressed will be of assistance.

In your representation of the Jefferson County Teachers Association (JCTA), you asked our office to address three questions:

1. Does HB 176 specify a mechanism by which retention decisions must be made by a school district under the restaffing option?

2. May a superintendent delegate the retention decisions to a committee that includes his appointments and make the committee his designee without violating HB 176?

3. May the parties to a teacher collective bargaining agreement collaborate and otherwise agree to apply provisions of the collective bargaining agreement, or fashion a memorandum of agreement regarding implementation of the provisions of HB 176, so long as those agreements do not violate the express provisions of HB 176?

In response to the first question, it is the view of this office that HB 176 does not specify a mechanism by which retention decisions must be made, other than noting that "personnel actions shall comply with KRS Chapter 161 and notwithstanding KRS 160.380(1)(c) relating to filling vacant positions and KRS 160.345(2)(h)1 relating to transfers." However, Jefferson County Public Schools ("JCPS") currently receives School Improvement Grants ("SIGs") from the U.S. Department of Education and, consequently, should be aware that any mechanism for making retention decisions under the restaffing option must comply with federal guidelines applicable to recipients of such grants.

In response to your second question, HB 176 does not prohibit the superintendent from developing a collaborative model that involves a committee making a recommendation on retention decisions. The silence of HB 176 on the mechanisms for making retention decisions should not be interpreted as prohibiting the superintendent to delegate the decision making on retention decisions. However, as a SIG recipient, JCPS should be aware of federal guidelines that address the use of a collaborative model, *e.g.*, a committee, vested with decision-making authority regarding retention decisions. We refer you to Sections B-1 and B-4 of *Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965* (the "Guidelines"), relevant portions attached hereto as Exhibit A:

> Section B-1: "A turnaround model is one in which an LEA [Local Education Association] must do the following: (1) replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates[...]."
>
> Section B-4: "...As part of a rigorous recruitment, screening and selection process, assessments of turnaround teachers' competencies can be used by the principal or district leader to distinguish between very high performers and more typical or lower-performing teachers in a turnaround setting. (...)"

In response to your third question, parties to a teacher collective bargaining agreement may collaborate and otherwise agree to apply provisions of the collective bargaining agreement as long as those agreements do not violate the express provisions of HB 176. We refer you to Section F-7(a) of the Guidelines, which directly addresses the issue of adherence to collective bargaining agreements in school intervention models:

> "Nothing in the SIG final requirements gives an LEA the authority to take action that it is not otherwise permitted to take. Accordingly an LEA must implement the school intervention models in a manner that complies with all governing laws, regulations, and agreements, which includes providing the rights, remedies, and procedures afforded to LEA employees *under existing collective bargaining agreements*. For example, in many States, an LEA has an obligation to bargain with its union over issues that are affected by elements of the school intervention models before those elements may be implemented. At the same time, however, an LEA may not fail to implement specific components of a school intervention model because they conflict with one or more of those rights, remedies, or procedures. For example, under the transformational model, an LEA must implement a teacher evaluation system that includes student growth as a significant factor; an LEA would not be exempt from this requirement because its collective bargaining agreement prohibits teacher evaluation based on student achievement. Therefore, as discussed in F-7, an LEA that has such a collective bargaining agreement and wishes to apply for SIG funds to implement a transformation model must negotiate with its collective bargaining unit to modify the collective bargaining agreement in a manner that enables the LEA to comply with the SIG final requirements without violating

the agreement. **If an LEA cannot resolve the conflict in a way that permits it to implement one of the school intervention models fully and effectively, it would not be able to apply for SIG funds.** (New for FY 2010 Guidance)"

(Emphasis added).

We believe that this provision protects the right of workers under the collective bargaining agreement. However, if there is a conflict between the collective bargaining agreement and federal regulations applicable to the recipients of SIGs, the JCTA and the JCPS must negotiate, pursuant to the terms of the collective bargaining agreement, and agree to waive or otherwise modify the conflicting provisions with respect to the school in question.

If you have any questions, please feel free to call me at (502) 696-5650.

Sincerely,

JACK CONWAY
ATTORNEY GENERAL

BY: _____
Aaron S. Ament, Assistant Attorney General