

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT
[DRAFT] SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is made by and between the Board of Education of Jefferson County, Kentucky (“**JCBE**”) and the Kentucky Department of Education (“**KDE**”) to be effective as of the Effective Date (defined below). JCBE and KDE are collectively referred to herein as the “**Parties**.”

RECITALS

WHEREAS, on or about February 14, 2017, KDE initiated a management audit (the “**Audit**”) of the Jefferson County, Kentucky Public School District (“**Jefferson County Public Schools**” or “**JCPS**”) pursuant to KRS 158.780, KRS 158.785, and 703 KAR 3:205;

WHEREAS, on or about April 30, 2018, the Interim Commissioner of KDE (the “**Interim Commissioner**”) issued his Management Audit Findings and Recommendation of State Management (“**Management Audit Findings**”), wherein the Interim Commissioner recommended to the Kentucky Board of Education (“**KBE**”) that the Jefferson County Public Schools be declared a “state-managed” district pursuant to KRS 158.785(3) & (4) and 703 KAR 3:205;

WHEREAS, on or about May 30, 2018, JCBE requested a hearing before KBE on the Interim Commissioner’s recommendation of state management, pursuant to KRS 158.780, KRS 158.785, and 703 KAR 3:205;

WHEREAS, there is currently pending before KBE an administrative action styled *Kentucky Department of Education v. Board of Education of Jefferson County, Kentucky*, Kentucky Board of Education Administrative Action No. 2018-01 (the “**Action**”); and

WHEREAS, in lieu of further engagement in the administrative process, JCBE and KDE desire to engage in a mutually-designed collaborative and cooperative process based upon the statutory framework set forth in KRS 158.785 that has the mutual goal of making further improvements in the governance and administration of JCPS.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the Parties and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Terms of Agreement.**

A. *Dismissal of Action*

[1] Within 3 working days of the Parties signing this Agreement, the Parties will execute the Agreed Recommended Order of Dismissal with Prejudice attached to this Agreement as Exhibit A, and it will be tendered to the Hearing

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

Officer in the Action for signature and entry into the administrative record and submission to KBE for entry of a final order.

B. Retention of Authority By JCBE and Superintendent.

[1] Except as expressly limited by a specific provision in this Agreement, JCBE shall retain all power and authority granted to and currently exercised by it in its capacity as a body politic and corporate and local board of education under all applicable federal and Kentucky statutes, regulations and court decisions (“**Applicable Law**”), and the JCPS Superintendent (“**Superintendent**”) shall retain all power and authority granted to and currently exercised by him in his capacity as the executive agent of the JCBE under Applicable Law, including, but not limited to KRS 160.160, KRS 160.290, KRS 160.300, KRS 160.370, KRS 160.380 and KRS 160.390.

C. Final Corrective Action Plan.

[1] ~~KDE and JCBE have mutually agreed that, until the conclusion of the 2020 Audit as set forth in Section 1.E.[1], JCPS will be subject to and will implement the corrective plans and processes to address the 58 areas where the Audit found a deficiency, as set forth in the corrective action plans attached to this Agreement as Exhibit B (collectively, the “Final CAP”). Within 15 working days after the Effective Date of this Agreement, a representative or representatives of JCBE will meet and confer with a representative or representatives of KDE for the purpose of creating a corrective action plan or plans (collectively, the “Final CAP”) to address the deficiencies described in the Management Audit Findings. The respective representatives of JCBE and KDE will use their best efforts to reach agreement on the contents of the Final CAP within 15 working days of the initial conference. If the respective representatives of JCBE and KDE are unable to reach agreement on the contents of the Final CAP, then all such matters upon which the representatives agree shall be included in the Final CAP, and any such matter upon which the representatives cannot agree shall be submitted to the Interim Commissioner or his successor in office (“KDE Commissioner”) for final determination.~~

[2] Until the conclusion of the 2020 Audit as set forth in Section 1.E.[1], the Superintendent or his designee will provide monthly status reports to the KDE Commissioner or the KDE Commissioner’s designee related to progress on implementation of the Final CAP, and KDE staff will provide continual feedback, at least monthly, to JCPS related to the progress of JCPS in the implementation of the Final CAP.

D. Additional Terms.

[1] In accordance with KRS 160.380 and other laws governing the hiring of public school employees, JCBE will create and the Superintendent will staff by January 1, 2019, an independent office with the ability to investigate

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

complaints from any and all sources regarding any matter related to the Jefferson County Public Schools (i.e., Internal Auditor). The JCPS administrator in charge of this office will report administratively to the Superintendent (i.e., day-to-day reporting) and will report functionally to JCBE.

[2] In accordance with KRS 160.380 and other laws governing the hiring of public school employees, JCBE will create a cabinet-level position with responsibility for oversight and management of Exceptional Child Education Services (“ECE”), including special education pursuant to the Individuals with Disabilities Education Act, within JCPS, and the Superintendent will appoint to this position an educator with at least 10 years’ experience in the area of ECE. This appointment shall be made no later than January 1, 2019.

[3] KDE may place one or more KDE employees within JCPS to observe the functioning of the central office and/or individual schools. KDE will notify JCBE regarding the timing and logistics for the placement of any observers.

[4] Until the conclusion of the 2020 Audit as set forth in Section 1.E.[1], KDE may require the Superintendent to make arrangements for appropriate training or professional development of any JCPS employee with regard to any area that is directly related to the ~~JCPS~~Final CAP and is relevant to that employee’s duties, upon a finding by the KDE observer(s) identified in Section 1.D.[3] that such training or professional development is necessary.

[5] KDE may continue to provide on-site monitoring during state testing of JCPS schools.

[6] Until the conclusion of the 2020 Audit as set forth in Section 1.E.[1], the Superintendent or his designee will provide a monthly written and oral report to the KDE Commissioner or the KDE Commissioner’s designee.

[7] Until the conclusion of the 2020 Audit as set forth in Section 1.E.[1], the Superintendent or his designee will appear in person to provide a report to the KDE at its regularly scheduled bi-monthly meetings.

[8] Until the conclusion of the 2020 Audit as set forth in Section 1.E.[1], as required by KRS 160.350, the current Superintendent, Dr. Martin A. Pollio, will not be removed from office by JCBE unless the KDE Commissioner has first approved the grounds for removal.

[9] JCPS will provide the KDE Commissioner or the KDE Commissioner’s designee a copy of any change proposed by JCPS, including JCBE, to a Board Policy or Administrative Procedure within the areas of special education, physical restraint or seclusion of students, early childhood education, career and technical education, and facility maintenance and replacement. KDE shall have 7 working days from submission of the proposed change to review the

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

proposal and to provide written comments to the Superintendent. This provision shall remain applicable until the latter of the conclusion of the 2020 Audit as set forth in Section 1.E.[1], the final order in the administrative hearing as set forth in Section 1.E.[2], or the conclusion of any appeal as set forth in Section 1.E.[3]. As used in this Section 1.D.[9] and Section 1.D.[10], “Board Policy” means a policy adopted by JCBE pursuant to KRS 160.290(2) and JCBE Board Policy 01.5, and “Administrative Procedure” means a procedure prepared by the Superintendent pursuant to JCBE Board Policy 01.51. For avoidance of doubt, the procedures set forth in this Section 1.D.[9] and Section 1.D.[10] shall apply only to such changes that are proposed by JCPS. This Section 1.D.[9] and Section 1.D.[10] are not intended to permit KDE or the KDE Commissioner to propose changes that will be subject to these procedures.

[10] Any change proposed by JCBE following completion of the procedure set forth in Section 1.D.[9] to a Board Policy or Administrative Procedure within the areas of special education, physical restraint or seclusion of students, and early childhood education shall be sent to the KDE Commissioner for final review if such change ~~would materially change the plans and processes for correction of the Audit deficiencies as set forth in could impact any provision of the Final CAP.~~ The KDE Commissioner shall then have 7 working days to approve or disapprove such Board Policy or Administrative Procedure, and no change shall be effective unless approved by the KDE Commissioner. This provision shall remain applicable until the latter of the conclusion of the 2020 Audit as set forth in Section 1.E.[1], the final order in the administrative hearing as set forth in Section 1.E.[2], or the conclusion of any appeal as set forth in Section 1.E.[3].

[11] KDE understands that JCPS is currently reviewing the provisions of the JCPS student assignment plan. JCPS agrees to continue its review and to have modifications to the existing student assignment plan in place for the 2020-2021 school year.

[12] JCPS and KDE agree that the desired outcome of the arrangements set forth in Sections 1.D.[1] through 1.D.[11] is a process of mutual collaboration between the Parties that will result in a recommendation by the KDE Commissioner that no further action be taken at the conclusion of the 2020 Audit as set forth in Section 1.E.[1]. Accordingly, the Parties agree that any issues that could prevent the Commissioner from making that recommendation at that time should be identified and discussed by the Parties as far in advance of the 2020 Audit as possible, in order to give the Superintendent sufficient time to address those issues.

E. 2020 Audit.

[1] KDE will initiate a management audit pursuant to KRS 158.780, KRS 158.785, and 703 KAR 3:205 no earlier than September 15, 2020, and the KDE Commissioner will issue his report and recommendation with regard to the

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

audit within 90 calendar days after the commencement of the audit. Upon conclusion of the audit, the KDE Commissioner will recommend either that no further action be taken; that the Jefferson County Public Schools be declared a “state-assisted” district as set forth in KRS 158.785(4) and KRS 158.785(6); or that the Jefferson County Public Schools be declared a “state-managed” district as set forth in KRS 158.785(4) and KRS 158.785(7).

[2] Upon a recommendation by the KDE Commissioner that the Jefferson County Public Schools be declared a “state-assisted” or “state-managed” district, JCBE may request an administrative hearing before the KBE pursuant to KRS 158.780(1)(c).

[3] To the extent JCBE disagrees with the KBE’s final order following the administrative hearing contemplated by Section 1.E.[2] of this Agreement, JCBE may appeal the final order to the Franklin County, Kentucky Circuit Court in accordance with KRS 158.780, KRS 158.785, KRS Chapter 13B, and other provisions of Kentucky law governing litigation in the Kentucky courts.

2. **Attorney Representation.** This Agreement is entered into voluntarily by the Parties who stipulate and agree that they are under no duress or undue influence. The Parties represent that in the execution of this Agreement, they had the opportunity to consult legal counsel of their own selection and that said attorneys have reviewed this Agreement, made any desired changes and advised their respective clients with respect to the advisability of making the settlement provided herein and of executing this Agreement.

3. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the Parties and supersedes all prior and contemporaneous statements, promises, understandings or agreements, whether written or oral.

4. **Amendments.** This Agreement may be amended, modified, or altered at any time upon the approval of the Parties; however, any such amendment must be in writing and signed by all Parties in order for such amendment to be of any force and effect.

5. **Partial Invalidity.** In the event that any provision of this Agreement is declared by any court of competent jurisdiction or any administrative law judge to be void or otherwise invalid, all of the other terms, conditions, and provisions of this Agreement shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in the Agreement and in such form, the remainder of the Agreement shall continue to be binding upon the Parties. Notwithstanding the foregoing provisions of this Section 5., if any provision of Section 1.C.[1], Section 1.D.[9], or Section 1.D.[10] is declared by any court of competent jurisdiction or any administrative law judge to be void or otherwise invalid, the audit referenced in Section 1.E.[1] shall begin no sooner than 30 days and no later

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

than 90 days after such declaration, irrespective of any post-judgment motion or appeal, except that under no circumstance shall such an audit begin prior to September 15, 2019.

6. **Applicable Law.** This Agreement shall be subject to and governed by the laws of the Commonwealth of Kentucky, without regard to conflict of law rules.

7. **Dispute Resolution.** In the event of a dispute arising from or related to this Agreement, the Parties agree as follows:

A. Prior to pursuing any other legal remedies or dispute resolution procedures, the Parties will first attempt to resolve, through good-faith discussions between the Superintendent (or an appropriate designee) and the KDE Commissioner (or an appropriate designee), any dispute arising from or related to this Agreement. Any agreement reached between the Superintendent and the KDE Commissioner (or designees) shall be subject to the approval of the JCBE.

B. If the Superintendent and the KDE Commissioner (or designees) are unable to resolve the dispute through good-faith discussions within 15 working days after the matter has been referred to them, the Parties agree to seek the assistance of a mutually agreed neutral third party to mediate their dispute.

C. If mediation does not resolve the dispute, either Party may pursue an appropriate legal action in the Franklin County, Kentucky Circuit Court. The Parties agree that the Franklin County, Kentucky Circuit Court shall be the exclusive venue for any legal action brought to interpret or enforce any terms of this Agreement.

8. **Counterparts.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or email shall be effective as delivery of an originally executed counterpart of this Agreement.

9. **No Adverse Construction.** The Parties acknowledge that this Agreement has been prepared by each of them through counsel. In the event any part of this Agreement is found to be ambiguous, such ambiguity shall not be construed against any Party.

10. **Further Acts.** In addition to the acts recited in this Agreement, the Parties agree to perform, or cause to be performed on the date of this Agreement, or thereafter, any and all

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

such further acts as may be reasonably necessary to consummate the actions contemplated herein and to further the intent of this Agreement.

11. **Authority.** Each person(s) executing this Agreement as an agent or in a representative capacity warrants that he or she is duly authorized to do so.

12. **Effective Date.** This Agreement will be effective when KBE issues a final order dismissing the Action.

13. **No Waiver.** Failure of a party to insist on strict compliance with any of the terms, covenants, and conditions of this Agreement shall not be deemed a waiver of such terms, covenants, and conditions, or of any similar right or power, at any subsequent time. Except as expressly limited by ~~a specific provision in~~ the provisions of this Agreement that pertain to audit timing, KDE shall retain all power and authority granted to and currently exercised by it in its capacity as an agency of the Commonwealth under all Applicable Law, and the KDE Commissioner shall retain all power and authority granted to and currently exercised by him in his capacity as the executive agent of KDE under all Applicable Law.

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below:

KENTUCKY DEPARTMENT OF EDUCATION

By: _____

Its: _____

Date: _____

JEFFERSON COUNTY BOARD OF EDUCATION

By: _____

Its: _____

Date: _____

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

EXHIBIT A

AGREED RECOMMENDED ORDER OF DISMISSAL WITH PREJUDICE

~~**EXHIBIT B**~~

~~**FINAL CAP**~~

Commented [A1]: The posture of the proposed agreement has changed, which necessitates removing Exhibit B. KDE will not agree to delay a potential settlement until future actions (i.e., development of a CAP) occur.

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT
COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF EDUCATION
ADMINISTRATIVE ACTION NO. 2018-01

KENTUCKY DEPARTMENT OF EDUCATION

PETITIONER

v.

BOARD OF EDUCATION OF JEFFERSON
COUNTY, KENTUCKY

RESPONDENT

AGREED RECOMMENDED ORDER OF DISMISSAL WITH PREJUDICE

Upon agreement of the Parties, and the Hearing Officer being advised that their dispute has been resolved;

IT IS HEREBY RECOMMENDED that this matter be **DISMISSED WITH PREJUDICE** and stricken from the docket. Each party shall bear his or its own costs and attorney fees.

HEARING OFFICER

DATE

HAVE SEEN AND AGREE:

Barry L. Dunn
Megan H. Kinsolving
Todd G. Allen
Kentucky Department of Education
300 Sower Blvd., 4th Floor
Frankfort, Kentucky 40601

Byron E. Leet
Francis J. Mellen
Allison L. Brown
Julie A. Laemmle
WYATT, TARRANT & COMBS, LLP
500 West Jefferson Street, Suite 2800
Louisville, Kentucky 40202-2898

Counsel for Kentucky Department of Education

*Counsel for Board of Education of Jefferson
County, Kentucky*

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT

| [61763056.3.3.3.2](#)