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Commissioner of Education

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
DEPARTMENT OF EDUCATION

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May 20, 2010

Superintendent Sheldon Berman
Jefferson County Schools
3332 Newburg Road
Louisville, KY 40232

RE: Interpretation of House Bill 176 Requirements and School Improvement Grants (SIG) Guidance by the United States Department of Education (USED)

Dear Superintendent Berman:

This letter is to clarify the requirements of HB 176 and the interaction with United States Education Department (USED) guidance regarding the school improvement grant (SIG) program. As you know, HB 176 is a state law that adopted several definitions taken from and pursuant to the SIG program as implemented by the USED. As a result, various portions of HB 176 that relate directly to the SIG program can be interpreted with the assistance of federal guidance regarding these same issues to the extent that the interpretation does not conflict with the intent of HB 176. We have received guidance from the USED regarding some issues that have arisen in Jefferson County regarding the restaffing option available under HB 176 and recognized by the SIG program.

As you know, the restaffing option (chosen by JCPS) under HB 176 and 703 KAR 5:180E requires the screening of faculty and staff with the retention of no more than 50 percent of the faculty and staff at the school and replacement of the principal. USED officials have confirmed that for purposes of meeting the definitions of the SIG program, the Kentucky Department of Education may interpret whether or not compliance with a portion of the restaffing mandates began up to two (2) years prior to the current year to qualify under the definition.

In numerous conversations with you and your staff, the two issues that continue to remain include the percentage of employees to be replaced and whether principals hired after July 2007 meet the requirements of the restaffing option under HB 176, as interpreted by the SIG guidance. It is our interpretation that principals hired, transferred or reassigned after July 2007 may qualify as meeting the definition of replacement of the principal under HB 176 and as interpreted by USED regarding that same definition under the SIG program. As result of this interpretation, I encourage the district to revisit the leadership assessment appeals to the state board and to determine whether those are still necessary. However, keep in mind that the guidance that allows retention of these principals does not negate the results of the leadership assessments that



recommended otherwise. As a result, a decision to retain these principals is permissible under HB 176 as interpreted by the SIG guidance however, the district's SIG application must demonstrate efforts that will be made to rectify or improve deficiencies cited in the leadership assessments.

It is also our interpretation that faculty and staff hired, transferred or reassigned after July 2007 may qualify under the 50 percent restaffing requirement. However, please be advised that in order for any hires made during this time period to qualify under this provision, the hires must have been made utilizing the same standards and procedures that are being utilized now as a result of the leadership assessments. In order to meet the 50 percent requirement, this means that hiring, transferring or reassigning staff during the past two years must have been accomplished using standards adopted locally by the JCPS to measure effectiveness of staff who can work within the turnaround environment to meet the needs of students, pursuant to 703 KAR 5:180E and as reaffirmed by USED SIG guidance. Thus, individuals that qualify under this interpretation must have been hired as part of a bona fide turnaround effort made by the district, school-based decision making council, or principal during this period.

We also want to point out that HB 176 specifically states that bargained contracts by a local board of education "shall not take precedence over the requirements" of the restaffing option and HB 176 notwithstanding KRS 160.380 (1) (c) relating to filling vacant positions and KRS 160.345 (2) (h) 1 relating to transfers under the restaffing option. Any efforts to utilize portions of the bargained contracts or use new agreements with a bargaining representative to implement the restaffing option may be in violation of HB 176 if the elements of the bargained agreement interfere with or prevent the bona fide implementation of turnaround options mandated by HB 176.

It is important to note that the plans submitted by JCPS in an application for SIG funding will be reviewed for compliance with interpretations outlined in this letter as well as the remainder of requirements on HB 176, 703 KAR 5:180E and the SIG guidance. We expect the application to fully include evidence of how the staffing requirements have been satisfied. Finally, please know that substantial progress must be made in these schools during the first year or KDE will reserve the right to revisit these issues and withhold SIG funding in the second year.

Sincerely,



Terry Holliday, Ph.D.

Cc: Kevin C. Brown
Lisa Gross
Debbie Hicks
Larry Stinson
Larry Taylor