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KENTUCKY DEPARTMENT OF EDUCATION

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February 14, 2017

VIA EMAIL AND U.S. MAIL

Superintendent Donna Hargens
Jefferson County Public Schools
3332 Newburg Road
Louisville, KY 40232

RE: Management Audit of JCPS

Dear Dr. Hargens:

As you know, since July 2016, the Jefferson County Public School district (JCPS) has been under a “management review” pursuant to KRS 158.780, KRS 158.785 and 703 KAR 3:205. A management review was triggered when Kentucky Department of Education (KDE) staff reviewed data indicating significant deficiencies in the reporting of physical restraint and seclusion (restraint and seclusion) data within JCPS. Thank you for the cooperation of the district’s staff during this review period. This letter provides the results of the management review.

OVERVIEW OF THE MANAGEMENT IMPROVEMENT PROGRAM

A management review is the first step in the “management improvement program” required by KRS 158.780 and 703 KAR 3:205. During a management review, if data reviewed by KDE staff reveal “significant deficiencies” in a school district, an onsite review in that district is required. If the data review and the onsite review reveal significant deficiencies, the commissioner of education is required to determine if those deficiencies indicate the presence of “critically ineffective or inefficient management.” If it does, the commissioner is required to order a comprehensive management audit of the district pursuant to KRS 158.785 and 703 KAR 3:205. A comprehensive management audit dives deeper into the root causes of any significant deficiencies found during the review, and also explores other issues that may be hindering the success of the district. If the management audit establishes an “existing pattern of a significant lack of effectiveness and efficiency,” the commissioner is required to place a recommendation to the Kentucky Board of Education (KBE) for “state assistance” or “state management” of the district. In the alternative, the findings of an audit could be tendered to the district without a recommendation to the KBE for assistance or management. Again, the purpose of this letter is to

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inform you of the results of the management review which is the first phase of management improvement.

MANAGEMENT REVIEW OF JCPS

Because the restraint and seclusion data discrepancy was an issue determined to be a significant deficiency, two parallel onsite reviews of JCPS were ordered by me via letter to you on July 20, 2016. The first review took place from August 28 through September 2, 2016. The review team consisted of KDE staff from the Office of Continuous Improvement and Support and the Office of Finance and Operations. This onsite review focused on five areas of district operations: governance, policy and procedure; food services, transportation and facilities; financial management; personnel administration and instructional management. The team interviewed over 140 JCPS staff, including the superintendent, board members, central office staff, principals and teachers.

After a review of restraint and seclusion data by KDE staff from the Office of Teaching and Learning on August 3-4, 2016, a separate onsite review was conducted specifically regarding the issue of restraint and seclusion within JCPS from August 5 through September 9, 2016. Continued monitoring of JCPS restraint and seclusion data by KDE staff as part of the management review took place from August 1, 2016 through January 31, 2017. The restraint and seclusion onsite review included the following locations within JCPS:

- JCPS, VanHoose Education Center
- JCPS, District Operations Center
- Seneca High School
- Binet School
- Goldsmith Lane Elementary School
- Kenwood Elementary
- Olmstead Academy North
- Breckinridge Metro High School
- Home of the Innocents

At each of these sites, KDE staff interviewed administrators, core team trainers or members, exceptional child education (ECE) staff, student information system data entry staff, in-school security monitors, school resource officers (if applicable), and positive behavioral interventions supports (PBIS) staff (if applicable).

During the period of July 2016 through February 13, 2017 and pursuant to KRS 158.785 (2), KDE staff also have been monitoring other information relative to the instructional and operational performance of JCPS. This information includes, but is not limited to, the following:

1. media reports from January 1, 2016 through February 13, 2017 and that include the topics of management and finances, student safety, restraint and seclusion, data collection and discrepancies, transportation, school turnaround, and facilities;
2. teacher tribunal decisions issued over the past year involving JCPS; and

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3. preliminary data as of February 10, 2017 regarding significant discipline disproportionality rates of students with disabilities within JCPS.

SIGNIFICANT DEFICIENCIES FOUND DURING REVIEW OF JCPS

The following significant deficiencies (in no certain order) were indicated during the onsite reviews and review of other information relative to the instructional and operational performance of the JCPS:

1. JCPS only recently ceased operation of a separate data system redundant to the required state student information system (Infinite Campus) resulting in the gross underreporting of incidents of physical restraints and seclusion of students, and the continued use of an internal “data dashboard” that continues to undermine accurate data reporting in this area and further frustrates accurate data reporting due to parallel systems;
2. Reported totals of restraint and seclusion in 2014-15 after an Infinite Campus data correction by JCPS was 4,165 (3,558 restraint, 607 seclusion), which is 238 incidents less than the 4,403 incidents initially reported by the district after the data discrepancies were made public on or around March 3, 2016;
3. For the period between July 1, 2016 and December 31, 2016, 213 incidents of physical restraint and seclusion reported incorrectly in Infinite Campus by JCPS;
4. Contact from KDE staff to JCPS staff on or around October 17, 2016 to notify the district of restraint and seclusion data discrepancies, with no response from JCPS. Contact from KDE staff to JCPS again on January 26, 2017. JCPS responded on January 29, 2017;
5. The JCPS board adopted policy revisions to Procedures for the *Use of Physical Restraint or Seclusion in JCPS* on August 2, 2016 and replaced the term “physical restraint” with “physical assist” thus further frustrating and confusing the practices of restraint with other less invasive forms of physical assistance. “Physical assist” is inconsistent with state regulation if used as a synonym for physical restraint;
6. Revised policies by the JCPS board to allow for the increase in the number of core team members in a school trained to provide physical restraint if the school has a higher than average use of physical restraint than the district average; however, the revised policies do not address the use of school-wide or targeted positive behavioral supports as a means to reduce the number of restraints or seclusion in those same high incident schools;
7. Interviews by KDE staff with multiple JCPS administrators indicating that they believed mandated training from 704 KAR 7:160, Section 6, (regulation on restraint and seclusion) is not being implemented with fidelity;
8. At least one JCPS administrator indicating to KDE staff that he/she had a lack of awareness of the required timeline for reporting injuries as a result of a physical restraint of a student;
9. Data provided by JCPS indicating that at the end of the 2015-16 school year, only 49 of the 172 school buildings in JCPS had the appropriate number (5) of core team members trained per JCPS policy to administer student restraint. In August 2016, JCPS staff indicated that the majority of schools in JCPS would still not have enough staff trained. When asked by KDE staff if there was a plan to rectify the issue, a JCPS staff person responded by saying “I don’t know. I’ve told the powers that be and they just say ‘we hear you.’ I send Area

Superintendents monthly notices to say, ‘hey you need to train your staff.’ I have never got [sic] a response;”

10. Data provided by JCPS indicating that at the beginning of the 2016-17 school year, there were 32 JCPS school facilities without any appropriately trained core team members as required by state law;
11. Data from Infinite Campus indicating that students were physically restrained in school facilities that had no appropriately trained core team members or were physically restrained in school facilities by staff members who were not identified by JCPS as having been trained in the appropriate use of physical restraint;
12. Interviews by KDE staff with JCPS staff indicating the inappropriate use of School Resource Officers (SROs) and/or sworn law enforcement officers to intervene in physical restraint and seclusion, including the use of SROs or law enforcement when the situation called for use of less restrictive behavioral interventions, thus thwarting efforts to implement positive behavioral interventions;
13. Interviews by KDE staff with JCPS staff indicating that physical restraint is being used in multiple JCPS facilities as a means to bring about compliant behavior versus being reserved for behavior that poses an imminent danger of physical harm to self or others in violation of 704 KAR 7:160;
14. While interviews with administrators and staff indicate that as of August 2016 the Aikido Control Technique (ACT) is no longer being used in JCPS (pursuant to KDE directive on August 2, 2016), JCPS’ use of ACT beginning in 2012 raising overall concerns with decision-making in the district considering that a July 27, 2016 KDE staff interview with Founder/Master Instructor of ACT revealed that ACT utilizes physical techniques that culminate in prone and supine restraint (strictly prohibited by 704 KAR 7:160), joint manipulation and pressure point pain compliance;
15. During interviews, several JCPS staff admitting to KDE staff that they witnessed inappropriate physical restraint procedures by colleagues; however, they refused to divulge specifics to KDE staff citing fear of reprisal from JCPS administration;
16. The Kentucky Protection and Advocacy Report of December 1, 2016: *“The Near-Death of Brennan Long: Autopsy of an Abusive Restraint”* corroborating many, if not all of the significant deficiencies in numbers 1 through 15, above;
17. Existence of numerous media reports over the past six (6) months regarding allegations of student-on-student bullying, assault, and sexual assault on buses;
18. Existence of numerous media reports and personnel actions over the past six (6) months regarding allegations of JCPS personnel engaged in assault, kicking, shoving and other inappropriate interactions with students, including the issue of whether bus monitors are sufficiently dispersed among JCPS bus routes;
19. A recent majority ruling of a JCPS teacher tribunal decision finding the following facts surrounding a teacher’s termination, but with larger implications regarding JCPS culture, personnel administration and governance as follows:

During her entire tenure at the school system, it does not appear Anderson ever received any intense supervision. Nor was the manner in which she was handling her classroom ever critically evaluated...this lack of adequate supervision led to a

sub-par performance with respect to the management of her class and treatment of students...Although investigative report was compiled [regarding Anderson restraining a student until he vomited in her class and then making him clean it up], neither the central office nor the principal took any disciplinary action against Anderson... Disturbingly, the initial investigations conducted in 2011 and 2014 did not led [sic] to any kind of disciplinary action by the JCPS, even though investigations were conducted by the Investigation and Compliance Division of the school system. At the conclusion of these investigations no action was taken, nor were they mentioned in Anderson's evaluations...The Tribunal finds it deeply disturbing that throughout her long tenure at the school, her supervisors did not substantially review her documentation or assess the manner in which she was attempting to motivate her students. To this Tribunal, it is clear she had created an atmosphere of despair in her classroom, not one of hope.

(Words in brackets not in original)

Jodi Anderson v. Jefferson County School District, Agency Case No. 16-23, Administrative Action No. 16-KDE-0249, Findings of Fact; Conclusions of Law and Final Order of the Tribunal, pages 6-20;

20. On February 6, 2017, KDE's Division of Learning Services corresponding with JCPS to convey the following information and preliminary data regarding findings of significant disproportionality (SD) in the special education student population:

....data on discipline of special education students from the 2015-2016 school year has been reviewed... Jefferson County has been found to have SD in two separate areas. First, Jefferson County is identified for the rate at which black special education students in the district were subject to In-School removals greater than 10 days and second the district is identified for the rate at which black special education students were subject to Out-of-School removals of greater than 10 days. In both cases, black students were subject to these types or [sic] removals at a rate significantly greater than their non-black special education peers in the district.

For In-School Removals greater than 10 days, black students were removed at a rate of 0.709 per 100 black special education students. Non-black special education students were subject to this same type of In-School Removal only 0.176 per 100 non-black special education students. This means black special education students were 4.034 times more likely to be subject to In-School Removals greater than 10 days compared to their non-black peers. Similarly with Out-of-School removals greater than 10 days, black special education students were subject to removals for greater than 10 days at a rate 5.221 times the rate of their non-black special education peers (0.208 per 100 non-black compared to 1.085 per 100 of black special education students).

This data reveals a significant disproportionality in the special education student population and is evidence of a significant deficiency;

21. JCPS currently having nineteen (19) Priority Schools, including two schools identified in the current school year. There is not a structure in place within JCPS to provide needed supports to low-performing schools before they are identified as Priority Schools;
22. Through KDE data analysis, ten (10) schools identified for each level (elementary, middle and high) with the lowest percentage of students scoring at proficient and distinguished (PD%) in reading and mathematics for four specific student groups—White, African American, Hispanic and Free/Reduced Price Lunch. Schools within JCPS were included in the ten schools having the lowest PD% in reading with all student groups and at all levels and in mathematics with all student groups at elementary and middle levels. At high school, schools within JCPS were identified in the ten schools with the lowest PD% in mathematics for African American and Hispanic. Schools within JCPS were not identified in the ten schools with the lowest PD% in mathematics for White and Free/Reduced lunch student groups;

While the following findings from the management review do not individually rise to the level of significant deficiencies, considering the financial and human capital resources available to JCPS, I have determined, that taken together, the following constitute a serious deficiency:

23. Nonexistent or ineffective systemic approach to develop new/review existing policies;
24. Nonexistent or ineffective monitoring process to ensure district policies are effective;
25. Lack of evidences of district evaluations and processes to ensure that, over time, the student assignment plan and resulting transportation plan is providing opportunity, equity and access to all students;
26. Failure of special needs coordinators to receive pertinent information regarding student medical requirements resulting in lack of student medical information to bus drivers and/or bus monitors during student bus transit;
27. While a cost-saving measure, over 200 “double” transportation routes resulting in potential supervision and staffing issues for students arriving early or staying late at school facilities;
28. Lack of evidences of planning for additional and adequate funding sources to specifically address maintenance and facility needs;
29. Lack of evidences of consistent implementation of processes and protocols around curriculum and assessment to ensure sustainability and repeatability, thus thwarting continuous improvement;
30. Lack of evidences of feedback and follow-up from the district level to the school level regarding implementation of professional learning communities (PLCs), continuous school improvement plans (CSIPs) and continuous district improvement plans (CDIPs);
31. Questions remaining in regard to the recent JCPS contract with the Grafton Integrated Health Network (GIHN) to pilot the use of the UKERU crisis management technique. While JCPS is commended for appearing to begin to take a proactive approach to reduce the use of restraints, it is unclear how and if UKERU will be implemented with or duplicate other

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positive behavioral supports already available through the Kentucky Center for Instructional Discipline (KYCID) or other providers; and

32. While I commend JCPS for engaging with the Jefferson County Teachers Association and the Jefferson County Public Education Foundation to administer an employee engagement survey at the end of the 2015-16 school year, concerns with reports that the survey results have never been released to the public, furthering issues about the transparency, culture and efforts of continuous improvement within the district.

Based upon the data and information reviewed during the management review resulting in the finding of the many significant deficiencies outlined above, I have determined that there is a presence of critically ineffective or inefficient management in the JCPS and accordingly, a comprehensive management audit of the governance and administration of JCPS is required pursuant to KRS 158.785 (2) and 703 KAR 3:205.

MANAGEMENT AUDIT OF JCPS

A comprehensive management audit will be conducted over the next few months by a team of KDE staff and other outside professionals that may have expertise in issues encountered by large urban districts like JCPS. Because of the size of JCPS, we anticipate that the audit team will need to be on the ground in the district no fewer than 10-14 total days. The audit team will strive to avoid the disruption of classes and the day to day operation of the district. The audit timeframe will continue well past the onsite phase in order for the audit team members to evaluate data and draft findings. As a result, I do not anticipate issuing any findings or any recommendations to the KBE prior to the end of the 2016-17 school year. Associate Commissioner Kelly Foster will lead the audit team and she will be in contact with you this week regarding a proposed schedule and timeline.

Please be advised that pursuant to KRS 156.210, 158.780, 158.785 and 703 KAR 3:205, all papers, archives, records and access to personnel shall be made available to the audit team. I am further requesting that you institute a “hold” on any routine document destruction under the record retention schedule until such time as the audit has been completed. Likewise, no other relevant document or file should be destroyed by JCPS staff in anticipation of the audit.

I must be clear that the decision to perform a management audit of JCPS is not about the leadership of one person. The audit is designed to take a comprehensive look at the entire school district to find any systems and processes that are dysfunctional or broken. As JCPS is home to some of the best schools in the state, we also anticipate finding best practices. I will be instructing the KDE audit team to highlight best practices, as well as any deficiencies, in the final audit report. I also am pleased to report that the management review revealed few issues involving school technology or financial/budget concerns; however, those issues will remain subject to the comprehensive management audit, including review of appropriate use of targeted funding sources.

The success of public education in the Commonwealth cannot occur without all districts being engaged in sound educational and management practices. I understand that this type of action

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can be demoralizing to staff and students. On the other hand, this effort can reap many positive results if we work together to build upon the positives of JCPS while creating a plan on how to correct the deficiencies so that all children can be successful. Regardless of the outcome of this audit, my intention is that KDE provide the best possible support to our districts so that every child, regardless of zip code, is given the tools to reach his or her fullest potential.

Sincerely,



Stephen L. Pruitt, Ph.D.

Commissioner of Education

c: Chris Brady, JCPS Board Chair
KDE Planning Team