COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION ___
CIVIL ACTION NO. 17-CI-_____

COMMONWEALTH OF KENTUCKY PLAINTIFF
ex rel. ANDY BESHEAR, ATTORNEY GENERAL

v.

MATTHEW G. BEVIN, in his official capacity as Governor of the Commonwealth of Kentucky DEFENDANT

SERVE: Office of the Attorney General
The Capitol Building
700 Capitol Avenue
Frankfort, Kentucky 40601-3449

HAL HEINER, in his official capacity as Secretary of the Education and Workforce Development Cabinet DEFENDANT

SERVE: Office of the Attorney General
The Capitol Building
700 Capitol Avenue
Frankfort, Kentucky 40601-3449

COMPLAINT FOR DECLARATION OF RIGHTS AND A PERMANENT INJUNCTION

*** *** *** *** *** *** *** ***

Comes the Plaintiff, Commonwealth of Kentucky *ex rel.* Andy Beshear, Attorney General (hereinafter "Attorney General"), by and through counsel, and brings this action for a permanent injunction and declaration of rights against the Defendants, Matthew Griswold Bevin, in his official capacity as Governor of the Commonwealth of Kentucky, and Hal Heiner, in his official capacity as Secretary of the Commonwealth of Kentucky Education and Workforce Development Cabinet. A ruling by this court is required to stop Governor Bevin's unlawful and unconstitutional actions that seek to control the decisions of statutorily independent state boards.

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INTRODUCTION

Governor Bevin claims "absolute authority" to dissolve and/or reorganize any of the more than four hundred (400) state boards. Governor Bevin has exercised this authority in an unprecedented and abusive fashion, dissolving, altering, or reorganizing thirty-seven (37) state boards in just his first twenty (20) months in office.[1] In June of 2016, Governor Bevin took the unprecedented step of attempting to abolish and "reorganize" two of the Commonwealth's most prominent boards: the Kentucky Retirement Systems Board of Trustees and the University of Louisville Board of Trustees.

These actions resulted in litigation before the Franklin Circuit Court. The Kentucky Retirement Systems matter is currently pending before the trial court. In the University of Louisville matter, the Franklin Circuit Court ruled that KRS 12.028 does not apply to the independent and autonomous governing boards of the Commonwealth's public universities. The Governor's appeal is pending before the Kentucky Supreme Court.

The University of Louisville matter shows the dangers of the Governor's "absolute authority." There, the Governor's purging of the board's trustees resulted in significant damage to the university. His conduct specifically caused the university's accreditation to be placed on probation, threatening federal student aid, federal research dollars, and even NCAA eligibility.

Undeterred by either of these lawsuits or the serious ramifications of his actions, on June 2 and June 16, 2017, Governor Bevin again exercised his "absolute authority," reorganizing numerous autonomous education boards. In these reorganizations, Governor Bevin again purged dozens of board members, attempted to change the boards' statutory structures and experience

[1] *See* Exhibit A (List of affected boards and the executive orders that reorganized them).

requirements, and re-wrote statutory provisions in a manner to provide the Governor with more power and control than the General Assembly granted.

Specifically, the Governor issued Executive Order 2017-364 (the "Executive Order" attached hereto as Exhibit B). The Executive Order alters or abolishes and then recreates the following seven (7) statutory education boards:

- Kentucky Board of Education;
- Council on Postsecondary Education;
- Standards and Assessments Process Review Committee;
- School Curriculum, Assessment and Accountability Council;
- Education Professional Standards Board;
- Reading Diagnostic and Intervention Grant Steering Committee;
- State Advisory Council for Gifted and Talented Education; and

Executive Order 2017-364 demonstrates that Governor Bevin believes he has unlimited discretion under KRS 12.028 to ignore, suspend, or materially alter the law, or even create new law. Accordingly, a ruling on the constitutionality of KRS 12.028 as it relates to independent state boards is imperative. With this Complaint, the Attorney General asks the Court to declare that the Governor's use of KRS 12.028 violates the Kentucky Constitution. Such a ruling is necessary as the Governor is in the process of reorganizing an additional thirty-nine (39) boards to remove their statutory independence and grant the Governor even more power.

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NATURE OF THE ACTION

1. This Complaint for Declaration of Rights and a Permanent Injunction is governed by the Kentucky Declaratory Judgment Act, KRS 418.010, *et seq.*, Kentucky Rule of Civil Procedure ("CR") 57, and CR 65; the Attorney General initiates this Complaint pursuant to his authority under the Kentucky Constitution, KRS Chapter 15, and the common law.

2. KRS 418.040 provides this Court with authority when a controversy exists to "make a binding declaration of rights, whether or not consequential relief is or could be" requested. An actual and justiciable controversy concerning violations of Kentucky constitutional and statutory law clearly exists in this action.

3. Under CR 65, this Court has authority to issue a permanent injunction that restricts or mandatorily directs the performance of an act.

4. The Commonwealth requests an expedited review pursuant to KRS 418.050 and CR 57. At 10:30 a.m. on June 7, 2017, David Dickerson, Secretary of the Public Protection Cabinet, Gail Russell, Deputy Secretary of the Public Protection Cabinet, and Barry Dunn, General Counsel to the Public Protection Cabinet, appeared before the 2017 Interim Joint Committee on Licensing, Occupations, and Administrative Regulations at the Northern Kentucky Convention Center to present a plan for Governor Bevin to use KRS 12.028 to issue multiple executive orders to reorganize thirty-nine (39) additional state boards in the next thirty (30) days.[2] The Governor's

[2] As discussed by the representatives of the Public Protection Cabinet before the Interim Joint Committee, the Governor will reorganize the following boards: the State Board of Medical Licensure, the Board of Nursing, the Kentucky Board of Optometric Examiners, the State Board of Podiatry, the Kentucky Board of Dentistry, the Kentucky Board of Pharmacy, the Kentucky State Board of Chiropractic Examiners, the Board of Physical Therapy, the Kentucky Board of Licensure for Occupational Therapy, Board of Speech-Language Pathology and Audiology, the Board of Respiratory Care, the Kentucky Board of Licensure for Massage Therapy, the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, the Kentucky Board of Interpreters for the Deaf and Hard of Hearing, the Kentucky Board of Licensed Diabetes Educators, the Kentucky Board of Embalmers and Funeral Directors, the State Board of Accountancy, the Kentucky Board of Veterinary Examiners, the Kentucky Board of Licensure for Private Investigators, the Kentucky Board of Licensure for Long-term Care Administrators, the Kentucky Board of Barbering, the Kentucky Board of Hairdressers and Cosmetologists, the Kentucky Board of

continuous and repeated use of his claimed "absolute authority" to reorganize state administrative bodies and rewrite state law makes a decision regarding the constitutionality of KRS 12.028 and/or the limits of the Governor's authority under the statute imperative. Time is of the essence, as this justiciable controversy presents questions of immediate concern that must be resolved promptly in order to prevent further harm to state constitutional and statutory law and state boards. Additionally, as this case involves only disputed issues of law, and no disputed issues of fact will necessitate discovery, the Court can proceed directly to the merits without cause for delay.

5. This is an action brought to declare that KRS 12.028 is unconstitutional as used by the Governor to "reorganize" independent state boards and administrative bodies that are created, structured, and governed by statute.

6. This is also an action to declare Executive Order 2017-364 unconstitutional, unlawful, null, void, and of no effect.

7. This is also an action to enjoin Governor Bevin and Secretary Hal Heiner, and all of their agents, attorneys, representatives, and any other persons in active concert or participation with them, from implementing, enforcing, or otherwise taking action pursuant to Executive Order 2017-364.

Prosthetics, Orthotics, and Pedorthics, the Kentucky Board for Medical Imaging and Radiation Therapy, the Kentucky Board of Ophthalmic Dispensers, the Kentucky Board of Durable Medical Equipment Suppliers, the Kentucky Licensing Board for Specialists in Hearing Instruments, the Board of Examiners of Psychology, the Board of Alcohol and Drug Counselors, the Kentucky Board of Licensure for Professional Art Therapists, the Kentucky Board of Licensed Professional Counselors, the Kentucky Board of Licensure of Marriage and Family Therapists, the Kentucky Board of Social Work, the Kentucky Board of Licensure for Pastoral Counselors, the Kentucky Applied Behavior Analysis Licensing Board, the Kentucky Board of Architects, the Kentucky Board of Landscape Architects, the State Board of Licensure for Professional Engineers and Land Surveyors, and the Board of Registration for Professional Geologists. *See* "Proposed Reorganization of General Government Licensing Boards," Public Protection Cabinet, PowerPoint (attached hereto as Exhibit C).

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PARTIES

8. The Plaintiff, Commonwealth of Kentucky *ex rel.* Andy Beshear, is the Commonwealth's duly elected Attorney General, a constitutional office under Sections 91, 92, and 93 of the Kentucky Constitution. Pursuant to KRS 15.020, General Beshear is the chief law officer of the Commonwealth and all of its departments, commissions, agencies, and political subdivisions. General Beshear is duly authorized by the Commonwealth's constitutional, statutory, and common law, including his *parens patriae* authority, to enforce Kentucky law. As Attorney General, he has authority to bring actions for injunctive and other relief to enforce the Kentucky Constitution and the Commonwealth's statutes and regulations, including authority to bring an action against the Governor and other state agencies for injunctive relief. *See* KY. CONST. § 91; KRS 15.020.

9. The Defendant, Governor Matthew Griswold Bevin, is a duly elected constitutional officer of the Commonwealth of Kentucky, vested with – but limited by – such powers as are afforded him by the Kentucky Constitution and related state laws. The Governor is the chief executive officer of the Commonwealth charged by Section 81 of the Kentucky Constitution with taking care that the laws of the Commonwealth be "faithfully executed."

10. The Defendant Hal Heiner ("Secretary Heiner") is a program cabinet Secretary named in his official capacity as Secretary of the Commonwealth of Kentucky Education and Workforce Development Cabinet.

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JURISDICTION AND VENUE

11. An actual, justiciable controversy exists and this Court has subject matter jurisdiction over the action pursuant to KRS 418.040, KRS 23A.010, CR 57, and CR 65.

12. Venue is appropriate in this Court pursuant to KRS 452.405, since the primary offices of the Attorney General, the Governor, and Secretary Heiner are located in Frankfort, Franklin County, Kentucky. Additionally, this action generally relates to violations of various Kentucky constitutional provisions and statutes that were either determined or accomplished in Frankfort, Franklin County, Kentucky. This action also generally relates to violations of the Kentucky Constitution occurring in Frankfort, Franklin County, Kentucky.

13. Pursuant to KRS 418.040, *et seq.*, this Court properly may exercise *in personam* jurisdiction over the Defendants.

FACTUAL BACKGROUND

14. On June 2, 2017, Governor Bevin issued Executive Order 2017-334.

15. Citing KRS 12.028 as authority, Executive Order 2017-334 created the Charter Schools Advisory Council and altered or abolished and recreated the following seven (7) statutory education boards: Kentucky Board of Education; Council on Postsecondary Education; Standards and Assessments Process Review Committee; School Curriculum, Assessment and Accountability Council; Education Professional Standards Board; Reading Diagnostic and Intervention Grant Steering Committee; and State Advisory Council for Gifted and Talented Education.

16. On June 7, 2017, the Attorney General announced and specifically communicated to the Governor that Executive Order 2017-334 was unconstitutional and unlawful and granted the Governor seven (7) days to rescind his action.

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17. On June 14, 2017, the Governor indicated that he intended to amend the Executive Order by Friday, June 16, 2017.

18. On June 16, 2017, Governor Bevin issued Executive Order 2017-364.

19. Executive Order 2017-364 rescinded and superseded Executive Order 2017-334. However, it did not significantly change the Governor's unconstitutional and unlawful actions with respect to the seven (7) statutory education boards listed above.

Education Professional Standards Board

20. The Education Professional Standards Board was created by KRS 161.028.

21. In its first provision, KRS 161.028 recognizes that the Education Professional Standards Board is meant to be independent, stating it is "a public body corporate and politic and an agency and instrumentality of the Commonwealth, in the performance of essential governmental functions." KRS 161.028(1).

22. The Board's powers and duties are critical, and involve "[e]stablishing standards and requirements for obtaining and maintaining a teaching certificate[.]" KRS 161.028(1)(a).

23. Executive Order 2017-364 abolishes the Education Professional Standards Board, causing the terms of all of its members serving prior to the order to "expire and cease to exist". (EO 2017-364, ¶ XXV).

24. The Executive Order then re-creates the Board with largely the same powers and duties. (*See id.* at ¶¶ XXVI and XXVIII).

25. The Governor's actions in abolishing the Education Professional Standards Board, purging its membership, and then reforming the Board violate the independence mandated by KRS 161.028(1).

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26. KRS 161.028(1)(n) also provides the Education Professional Standards Board with independence, stating that it is the Board's "responsibility" to "[r]ecruit, select, employ and evaluate" its own executive director.

27. Executive Order 2017-364 removes this statutory authority from the Education Professional Standards Board and instead gives the Governor the sole authority to appoint the Board's executive director, ignoring, suspending, and rewriting KRS 161.028(1)(n). (EO 2017-364, ¶ XXVII).

28. KRS 161.028(2)(a) provides the Board independence by limiting the Governor's appointment power, stating the Governor's appointees to the Education Professional Standards Board "s*hall*" meet certain statutory criteria. (Emphasis added).

29. Specifically, under KRS 161.028(2)(a), the Governor must appoint to the Board:

1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
3. One (1) member representative of local boards of education; and
4. Three (3) members representative of postsecondary institutions, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer of an independent non-for-profit college or university.

30. Executive Order 2017-364 ignores, suspends, and rewrites the criteria the Governor's appointees must satisfy, providing an entirely different criteria list.

31. Specifically, under the Executive Order, the Governor must appoint the following: one (1) elementary school teacher; one (1) middle school teacher; one (1) high school teacher; one (1) science, technology, engineering, or mathematics teacher; one (1) arts and humanities teacher; one (1) exceptional education teacher; one (1) career and technical education professional; one (1) principal or school administrator; one (1) school counselor or psychologist; one (1) faculty member

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of a private postsecondary institution; one (1) faculty member of a public postsecondary institution; one (1) dual appointee of the School Curriculum, Assessment and Accountability Council; and one (1) parent or member-at-large. (*See* EO 2017-364, ¶ XXVI).

32. The Executive Order thus ignores, suspends, and rewrites KRS 161.028(2)(a), replacing the judgment of the General Assembly with the judgment of the Governor.

33. KRS 161.028(2)(a) sets out the mandatory structure for the Board.

34. Under KRS 161.028(2)(a), the Education Professional Standards Board "*shall*" be composed of seventeen (17) members, including fifteen (15) members appointed by the Governor. (Emphasis added).

35. The Executive Order ignores, suspends, and rewrites the law, reducing the Board's membership to fifteen (15), thirteen (13) of which are gubernatorial appointees. (EO 2017-364, ¶ XXVI).

36. Of critical importance, the Executive Order changes the statutory process of teacher discipline, removing the statutory right to immediately appeal an administrative ruling to Franklin Circuit Court.

37. Specifically, under KRS 161.120(1), the Education Professional Standards Board has the authority to take disciplinary action relating to the certificates it issues.

38. Pursuant to KRS 161.120(5)(a), the Board:

> shall schedule and conduct a hearing in accordance with KRS Chapter 13B:
>
> 1. Before revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate;
> 2. After denying an application for a certificate, upon written request filed within thirty (30) days of receipt of the letter advising of the denial; or

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3. After issuing a written admonishment, upon written request for a hearing filed within thirty (30) days of receipt of the written admonishment.

39. After this process, "[a]n appeal from any final order of the Education Professional Standards Board *shall* be filed in Franklin Circuit Court in accordance with KRS Chapter 13B." KRS 161.120(12) (emphasis added).

40. Executive Order 2017-364 removes the statutory right to directly appeal a final order of the Board to Franklin Circuit Court.

41. Instead, the Executive Order creates an entirely new appeal procedure, requiring final orders to be appealed to the Kentucky Board of Education. (EO 2017-364, ¶ XXIX).

42. Specifically, the Executive Order provides that a final disciplinary order of the Education Professional Standards Board "may be appealed to the Kentucky Board of Education within seven (7) days, which body should cause the case to be reviewed and answered within thirty (30) days in a manner prescribed by its Board." (*Id.*).

43. The Executive Order thus grants the Kentucky Board of Education jurisdiction outside the scope of its statutory authority and changes the Education Professional Standards Board's statutory disciplinary process in KRS 161.120.

44. The Executive Order also grants the Governor the power to remove and replace any member, other than an ex officio appointee, who misses three (3) consecutive board meetings. (EO 2017-364, ¶ LII).

45. In sum, Executive Order 2017-364 alters, suspends, and rewrites KRS 161.028 and 161.120 relating to the Education Professional Standards Board's independence and statutorily mandated structure and requirements for members, as well as the statutory appeal process for final Board orders.

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State Advisory Council for Gifted and Talented Education

46. KRS 158.648(1) creates the State Advisory Council for Gifted and Talented Education.

47. Under KRS 158.648(1), the purpose of the Council is to "make recommendations regarding the provisions of services for gifted and talented students in Kentucky's education system."

48. KRS 158.648(1)(c) provides for independence of the Council by mandating that members "*shall*" serve terms of three (3) years. (Emphasis added).

49. KRS 158.648(1)(c) further provides for independence by staggering the Council members' terms, meaning no Governor can appoint all members at one time.

50. Executive Order 2017-364 abolishes the State Advisory Council for Gifted and Talented Education, causing the terms of members serving prior to the order to "expire and cease to exist" in violation of the terms mandated in KRS 158.648(1)(c). (EO 2017-364, ¶ XLII).

51. The Executive Order then re-creates the Council with the same purpose, but allowing the Governor to appoint all new members, all at the same time. (*See id.* at ¶¶ XLIII and XLIV).

52. Further, despite the statutory terms for members, the Executive Order grants the Governor the power to remove and replace any member, other than an ex officio appointee, who misses three (3) consecutive board meetings. (EO 2017-364, ¶ LII).

53. KRS 158.648(1)(a) provides for the mandatory structure of the State Advisory Council for Gifted and Talented Education.

54. It specifically provides that the Council "shall be" composed of nineteen (19) members appointed by the Governor and three (3) nonvoting ex officio members. *Id.*

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55. The Executive Order ignores, suspends, and rewrites KRS 158.648(1)(a), reducing the Council's membership to fifteen (15), including eleven (11) members appointed by the Governor. (*Id.* at ¶ XLIV).

56. KRS 158.648(1)(a) limits the Governor's appointment power. It states that the Governor's appointees to the State Advisory Council for Gifted and Talented Education "*shall*" represent various constituencies. (Emphasis added). Specifically, under the statute the Council is to be composed of the following appointees:

1. Four (4) members shall be teachers within local school districts representing elementary, middle, and high school levels with at least one (1) full-time teacher of gifted and talented students and one (1) full-time teacher who teaches in a regular classroom;
2. Four (4) members shall be parents of students in local school districts, including two (2) parents of students identified as gifted and talented and at least one (1) who serves or has served on a school council;
3. Three (3) members shall be from postsecondary education institutions, including one (1) from an independent college or university;
4. One (1) member shall be a superintendent of a local school district;
5. Two (2) members shall be principals, including one (1) from an elementary or middle school and one (1) from a high school;
6. Two (2) members shall be coordinators of gifted and talented programs and services in local school districts;
7. One (1) member shall be a local board of education member;
8. One (1) member shall represent the visual and performing arts; and
9. One (1) member shall be appointed from the private business sector.

Id.

57. The Executive Order ignores, suspends, and rewrites these statutory requirements.

58. Under the order, all of the Governor's eleven (11) appointees must possess specific experience or background in gifted and talented education, and they must further include: one (1) elementary teacher; one (1) middle or high school teacher; one (1) gifted and talented program coordinator; one (1) parent of a gifted or talented child; one (1) science, technology, engineering,

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or mathematics teacher; one (1) arts and humanities teacher; one (1) school counselor or psychologist; one (1) superintendent or district assessment coordinator; one (1) faculty member of a private postsecondary institution; one (1) faculty member of a public postsecondary institution; and one (1) member-at-large who shall not be an active educator. (EO 2017-364, ¶ XLIV).

59. In sum, Executive Order 2017-364 alters, suspends, and rewrites KRS 158.648, which provides for the independence of the State Advisory Council for Gifted and Talented Education, sets the mandatory structure of the Council and mandatory terms for the Council's members, staggers those terms, and establishes criteria for Council appointments.

Reading Diagnostic and Intervention Grant Steering Committee

60. KRS 158.794 creates the Reading Diagnostic and Intervention Grant Steering Committee.

61. The Committee was created "for the purpose of advising the Kentucky Board of Education and the Department of Education concerning the implementation and administration of the reading diagnostic and intervention fund created in KRS 158.792." KRS 158.794(1).

62. KRS 158.794(2) provides independence for the Committee by creating set terms, stating that "[e]ach member of the committee … *shall* serve for a term of three (3) years or until a successor is appointed." (Emphasis added).

63. To provide additional independence, KRS 158.794(2) staggers the terms of the Committee's appointees, which means no Governor can make all appointments at the same time.

64. Executive Order 2017-364 abolishes the Reading Diagnostic and Intervention Grant Steering Committee, causing the terms of its members serving prior to the order to "expire and cease to exist" in violation of the terms mandated in KRS 158.794(2). (EO 2017-364, ¶ XXXII).

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65. In violation of both the explicit provisions and intent of KRS 158.794(2), the Executive Order then provides that the Governor shall appoint all new members, all at the same time. (*See id.* at ¶ XXXIV).

66. Further, despite the statutory terms for members, the Executive Order grants the Governor the power to remove and replace any member, other than an ex officio appointee, who misses three (3) consecutive board meetings. (EO 2017-364, ¶ LII).

67. KRS 158.794(1) provides for the mandatory structure of the Reading Diagnostic and Intervention Grant Steering Committee

68. It states the Committee "*shall* be" composed of sixteen (16) members, including thirteen (13) gubernatorial appointees. (Emphasis added).

69. The Executive Order ignores, suspends, and rewrites KRS 158.794, reducing the Reading Diagnostic and Intervention Grant Steering Committee's membership to fifteen (15), including ten (10) members appointed by the Governor. (*Id.* at ¶ XXXIV).

70. KRS 158.794(1)(a)-(e) limits the Governor's appointment power by requiring that appointees to the Reading Diagnostic and Intervention Grant Steering Committee meet certain statutory criteria. They include: four (4) primary program teachers with a specialty or background in reading and literacy; four (4) university or college professors with a specialty or background in reading and literacy representing universities; one (1) elementary school principal; one (1) certified library media specialist; and three (3) individuals from the state at large with an interest in reading and literacy. *Id.*

71. The Executive Order ignores, suspends, and rewrites KRS 158.794(1), changing the criteria appointees must satisfy. (EO 2017-364, ¶ XXXIV).

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72. Specifically, the Executive Order substitutes the judgment of the Governor over that of the General Assembly, now requiring: one (1) parent; one (1) elementary school teacher; one (1) middle or high school teacher; one (1) special education teacher; one (1) gifted and talented teacher; one (1) university or college professor; one (1) speech-language pathologist; one (1) librarian or certified media specialist; one (1) reading intervention teacher or administrator; and one (1) member who has experience assisting deaf and hearing-impaired children. (*Id.*).

73. In sum, Executive Order 2017-364 alters, suspends, and rewrites KRS 158.794, which provides for the independence of the Reading Diagnostic and Intervention Grant Steering Committee, sets out the mandatory structure of the Committee and the terms of its members, staggers those terms, and establishes criteria for Committee appointments.

School Curriculum, Assessment and Accountability Council

74. KRS 158.6452 creates the School Curriculum, Assessment and Accountability Council.

75. According to KRS 158.6452(1), the General Assembly created the School Curriculum, Assessment and Accountability Council to "study, review, and make recommendations concerning Kentucky's system of setting academic standards, assessing learning, identifying academic competencies and deficiencies of individual students, holding schools accountable for learning, and assisting schools to improve their performance."

76. KRS 158.6452(2) provides for the independence of the Council, stating members of the Council "shall" serve two (2) year terms. KRS 158.6452(2).

77. Executive Order 2017-364 abolished the School Curriculum, Assessment and Accountability Council, causing the statutory terms of all members serving on the Council prior

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to the date of the order to "cease to exist" in violation of the terms mandated in KRS 158.6452(2). (EO 2017-364, ¶ XVIII).

78. The Executive Order further violated the terms mandated in KRS 158.6452(2) by providing that Council members "shall serve for a term of three (3) years[.]" (EO 2017-364, ¶ XLIX).

79. Additionally, despite the statutory terms for members, the Executive Order grants the Governor the power to remove and replace any member, other than an ex-officio appointee, who misses three (3) consecutive board meetings. (EO 2017-364, ¶ LII).

80. KRS 158.6452 also provides for the independence of the Council by providing a mandatory structure.

81. KRS 158.6452(2) states the School Curriculum, Assessment and Accountability Council "*shall* be composed of seventeen (17) voting members appointed by the Governor." (Emphasis added).

82. After abolishing the Council and purging its members, the Executive Order re-created the Council, reducing it to fifteen (15) voting members, including thirteen (13) gubernatorial appointees and the Secretary of Education and Workforce Development (or his designee) and the Commissioner of Education serving in ex officio voting capacities. (EO 2017-364, ¶ XXI).

83. KRS 158.6452(2)(a) provides independence to the Council by limiting the Governor's appointment power.

84. Specifically, KRS 158.6452(2)(a) mandates that the Governor "shall" select fourteen (14) of his appointees to the School Curriculum, Assessment and Accountability Council

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from recommendations by organizations representing certain groups, including parents, teachers, and school boards. KRS 158.6452(2)(a)-(i).

85. The Executive Order removed any requirement that the Governor make appointments to the Council from recommendations made by education-related organizations. (EO 2017-364, ¶ XXI).

86. In sum, Executive Order 2017-364 alters, suspends, and rewrites KRS 158.6452, which provides for the independence of the School Curriculum, Assessment and Accountability Council, sets out the mandatory structure of the Council and the terms of Council members, and limits the Governor's appointment power by requiring recommendations from parties with knowledge and experience.

Kentucky Board of Education

87. KRS 156.029 establishes the Kentucky Board of Education.

88. Pursuant to KRS 156.070(1), the Kentucky Board of Education "*shall*" manage and control all "common" or public schools in the state and all programs operated in such schools. (Emphasis added).

89. KRS 156.029 provides the statutorily mandated structure of the Kentucky Board of Education, and KRS 156.029 and 156.040 prohibit certain requirements for board membership.

90. Executive Order 2017-364 violates and contradicts these statutes by changing the board structure, adding new members with additional rights, and by adding occupational and other requirements prohibited by the statute.

91. Specifically, KRS 156.029(1) mandates the Kentucky Board of Education "*shall*" consist of eleven (11) members appointed by the Governor and confirmed by the Senate and House of Representatives of the General Assembly. (Emphasis added).

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92. Of these eleven (11) members, seven (7) members "*shall*" represent each of the Supreme Court districts established by KRS 21A.010, and four (4) "*shall*" represent the state at large. *Id.* (emphasis added).

93. Under the executive order, Governor Bevin alters the mandatory board structure, expanding the Board to fifteen (15) members. (*See* EO 2017-364, ¶ XIII).

94. Specifically, the Executive Order adds four (4) new members to the Board, all of whom are to be designated by the Governor. (*Id.*).

95. The new members are neither representatives of Supreme Court districts nor "at-large" members as required by KRS 156.029.

96. Although these added members are termed "non-voting advisors," they "are entitled to be present at all meetings, including closed sessions, and to be fully heard and to participate in all topics of discussion." (*Id.*).

97. The requirement that the new members be "fully heard" in all discussions exceeds any statutory right granted to voting members under KRS Chapter 156.

98. Additionally, under KRS 156.029(2), appointments to the Kentucky Board of Education "*shall* be made without reference to occupation, political affiliation, or similar consideration. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator." (Emphasis added).

99. Similarly, KRS 156.040(3) provides that appointments to the Board "*shall* be made without reference to occupation, political affiliation, or similar considerations." (Emphasis added).

100. Under the Executive Order, the Governor added new occupational and similar requirements for all appointed, voting members. (EO 2017-364, ¶ XIV).

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101. Specifically, under the Executive Order, one (1) member of the board must be a parent of a public school child at the time of appointment; at least four (4) members must possess a minimum of five (5) years of experience within the field of education, including one (1) member with a background as a faculty member of a postsecondary education; and at least four (4) members must possess a minimum of five (5) years of leadership experience within business, including one (1) member with a background as an entrepreneur who has employed ten (10) or more persons. (*Id.*)

102. The Executive Order's occupational requirements violates the express prohibition of such requirements under KRS 156.029(2) and 156.040(3).

103. Under KRS 156.029(1), appointed members of the Kentucky Board of Education "shall" serve four (4) year terms.

104. Despite the statutory terms of members, the Executive Order grants the Governor the power to remove and replace any member, other than an ex officio appointee, who misses three (3) consecutive board meetings. (EO 2017-364, ¶ LII).

105. In sum, the Executive Order suspends, ignores, and rewrites the mandatory structure of the Board, the terms of its members, and the prohibitions on occupation requirements under KRS 156.029 and 156.040.

106. Moreover, the Governor's recent appointment of new members raises concerns as to conflicts and control by the Cabinet for Education and Workforce Development. Upon information and belief, one (1) new appointee is the spouse of that cabinet's general counsel, and another appointee is or was directly working for the cabinet through a "loan" program with a public university.

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Council on Postsecondary Education

107. The Council on Postsecondary Education was created by KRS 164.011.

108. Among its many duties, KRS 164.020 states that the Council of Postsecondary Education "*shall* adopt a strategic agenda that identifies specific short-term objectives in furtherance of long-term goals established in KRS 164.003(2)." KRS 164.0203(1) (emphasis added). These long-term goals include the achievement by 2020 of "[a] seamless, integrated system of postsecondary education strategically planned and adequately funded to enhance economic development and quality of life." KRS 164.003(2)(a).

109. KRS 164.011 highlights that the Council is meant to be independent, stating it is "an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic having all powers, duties, and responsibilities as are provided to it by law, appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky." KRS 164.011(1).

110. KRS 164.011(2), further limits the Governor's appointment power for the Council. It states that, in making all appointments to the Council on Postsecondary Education, the Governor "shall . . . assure equal representation of the two (2) sexes, inasmuch as possible; assure no less than proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration; and assure that appointments reflect the minority racial composition of the Commonwealth." The Governor further "shall" assure that no more than three (3) voting members reside in any one (1) judicial district of the Kentucky Supreme Court as of the date of appointment. *Id.*

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111. Executive Order 2017-3634 removes these limitations and requirements from appointments of the Council's faculty and student members in violation of KRS 164.011(2). (EO 2017-3634, ¶ IX).

112. KRS 164.011 provides for the membership of the Council. It states that the Council on Postsecondary Education "shall" be comprised of thirteen (13) citizen members appointed by the Governor, a full-time faculty member employed at a state institution of postsecondary education, a full-time student enrolled at a state institution of postsecondary education, and the commissioner of education. KRS 164.011(1), (3), and (4). The commissioner of education serves in a nonvoting ex officio capacity. KRS 164.011(1).

113. KRS 164.011 then provides which of these members must be confirmed by the Kentucky Senate.

114. Under KRS 164.011(1), only the citizen members of the Council on Postsecondary Education "s*hall*" be confirmed by the Kentucky Senate. (Emphasis added).

115. Executive Order 2017-364 ignores, suspends, and rewrites KRS 164.011 to require all voting members, including the faculty and student members, to be confirmed by the Senate. (EO 2017-364, ¶ IX).

116. Under KRS 164.011(6) each citizen member of the Council on Postsecondary Education "shall serve a term of six (6) years unless removed by the Governor for cause[.]"

117. Despite the statutory terms for members, the Executive Order grants the Governor the power to remove and replace any member, other than an ex officio appointee, who misses three (3) consecutive board meetings. (EO 2017-364, ¶ LII).

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118. In sum, the Executive Order suspends, ignores, and rewrites KRS 164.011, which provides the mandatory structure and confirmation process and the race, sex, geography, and political affiliation requirements for the board.

Standards and Assessments Process Review Committee

119. The Standards and Assessments Process Review Committee was established by the General Assembly during the 2017 Regular Session through the passage of Senate Bill 1 to review the procedural aspects of the review process undertaken by four (4) standards and assessments review and development committees, also created by the legislation. *See* 2017 Ky. Laws Ch. 156 (SB 1, sec. 3).

120. The General Assembly passed SB 1 on March 29, 2017.

121. The Governor approved Senate Bill 1 and signed it into law on April 10, 2017.

122. As of the date of this Complaint, the Governor has not appointed any members to the Standards and Assessments Process Review Committee.

123. Nevertheless, the Governor has ignored, suspended, and rewritten the legislation, second-guessing the legislature's judgment before even implementing the bill.

124. Under SB 1, KRS 158.6453(2)(f), as amended, provides the mandatory structure for the Standards and Assessments Process Review Committee

125. It provides that the Committee "*shall*" be composed of ten (10) members, including three (3) members appointed by the Governor; three (3) members of the Senate appointed by the Senate President; three (3) members of the House of Representatives appointed by the Speaker of the House of Representatives; and the commissioner of education. 2017 Ky. Laws Ch. 156 (SB 1, sec. 3) (emphasis added).

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126. In Executive Order 2017-364, Governor Bevin ignores, suspends, and rewrites KRS 158.6453(2), as amended in SB 1, by creating three (3) additional appointees to the Standards and Assessments Process Review Committee. (EO 2017-364, ¶ VIII).

127. The Governor thus increases the number of gubernatorial appointees on the Committee.

128. Under the order, these three (3) additional appointees, each of whom shall serve annual terms beginning June 1, 2017, shall include one (1) voting member of the Kentucky Board of Education, one (1) voting member of the School Curriculum, Assessment and Accountability Council, and one (1) voting member of the Education Professional Standards Board. (*Id.*).

129. The Executive Order thus sets criteria for the Governor's additional appointees where the legislation is silent.

130. The Executive Order also grants the Governor the power to remove and replace any member, other than an ex officio appointee, who misses three (3) consecutive board meetings. (EO 2017-364, ¶ LII).

131. In sum, Executive Order 2017-364 alters, suspends, and rewrites KRS 158.6453, as amended by SB 1, legislation passed during the 2017 Regular Session, in order to increase his influence on the Committee.

CLAIMS

Count I
Violations of KY. CONST. § 15

132. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

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133. Kentucky Constitution § 15, entitled "Laws to be suspended only by General Assembly," provides that "[n]o power to suspend laws shall be exercised unless by the General Assembly or its authority."

134. In altering or abolishing the statutory education boards as set forth above, Governor Bevin in Executive Order 2017-364 has suspended the laws that govern and structure them.

135. Kentucky Revised Statute 12.028 does not delegate to the Governor the General Assembly's power to suspend laws.

136. By suspending statutes without the authority of the General Assembly, Governor Bevin has violated Section 15 of the Kentucky Constitution.

Count II
Violation of the Nondelegation Doctrine

137. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

138. Under Kentucky Constitution §§ 27 and 29, the legislative power is vested in the General Assembly.

139. Thus, only the General Assembly has the power to make a law. This power cannot be delegated. *Legislative Research Comm'n by and through Prather v. Brown*, 664 S.W.2d 907, 915 (Ky. 1984).

140. The General Assembly can, however, establish standards and delegate its authority to implement a law, so long as the delegation contains controlling standards that limit the exercise of discretion. *See id.*

141. Again, under Kentucky Constitution § 15, "No power to suspend laws shall be exercised unless by the General Assembly or its authority."

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142. As set forth above, in issuing Executive Order 2017-364, Governor Bevin, citing the authority granted to him in KRS 12.028, suspends, alters, rewrites, and makes laws.

143. Kentucky Revised Statute 12.028 does not and cannot delegate to the Governor the authority to make law.

144. Furthermore, KRS 12.028 does not expressly delegate the General Assembly's authority to implement any law, nor does it delegate the General Assembly's authority to suspend the law.

145. Finally, KRS 12.028 sets forth no controlling standards, much less sufficient controlling standards that limit discretion.

146. Under Governor Bevin's use of his reorganization authority to alter independent state boards that are statutorily created and structured, KRS 12.028 violates the nondelegation doctrine and is unconstitutional.

Count III
Violations of KY. CONST. § 81

147. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

148. Under Kentucky Constitution § 81, the Governor must "take care that the laws be faithfully executed."

149. In altering, ignoring, suspending, and rewriting statutes that govern and structure state education boards, as described above, Governor Bevin has failed to take care that the laws are faithfully executed in violation of Section 81 of the Kentucky Constitution.

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Count IV
Violations of Separation of Powers
KY. CONST. §§ 27, 28, and 29

150. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

151. Kentucky Constitution § 27 divides the legislative, executive, and judicial powers of government among (3) three distinct branches.

152. Kentucky Constitution § 29 vests the legislative power in the General Assembly.

153. Under Kentucky Constitution § 28, no person or persons in one department of government "shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted."

154. In Executive Order 2017-364, Governor Bevin has suspended and made laws, as described above. In this way, Governor Bevin has invaded the legislative power of the General Assembly.

155. By issuing Executive Order 2017-364, Governor Bevin has violated the separation of powers firmly entrenched in Sections 27, 28, and 29 of the Kentucky Constitution.

Count V
Violations of KRS 12.028

156. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

157. Under KRS 12.028(1), the Governor has the power to reorganize state executive "organizational units and administrative bodies in order to promote greater economy, efficiency, and improved administration."

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158. In Executive Order 2017-364, as described above, Governor Bevin has altered a board created by the General Assembly during the 2017 Regular Session that has yet to meet or even have members appointed to it.

159. In Executive Order 2017-364, as described above, Governor Bevin has abolished multiple state education boards and re-created them with the same powers and duties.

160. In Executive Order 2017-364, as described above, Governor Bevin has altered various state education boards in order to increase his own influence and control.

161. Governor Bevin's actions under KRS 12.028 in Executive Order 2017-364 cannot be justified in terms of the promotion of "economy, efficiency, and improved administration."

162. As such, Governor Bevin's actions in Executive Order 2017-364 violate the terms and conditions of KRS 12.028.

Count VI
Violations of State Statutes Governing Education Boards

163. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

164. As described above, Governor Bevin's Executive Order 2017-364 alters the statutes that govern various state education boards, namely the Kentucky Board of Education, the Council on Postsecondary Education, the Standards and Assessments Process Review Committee, the School Curriculum, Assessment and Accountability Council, the Education Professional Standards Board, the Reading Diagnostic and Intervention Grant Steering Committee, and the State Advisory Council for Gifted and Talented Education.

165. The statutes so altered include KRS 156.029, KRS 156.040, KRS 164.011, KRS 158.6453, KRS 158.6452, KRS 161.028, KRS 161.120, KRS 158.794, and KRS 158.648.

166. By altering and re-writing these statutes, Governor Bevin has violated the statutes.

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167. Executive Order 2017-364 thus violates the statutes listed in paragraph 167.

Count VII
Violations of KRS 63.080

168. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

169. In relevant part, KRS 63.080(1) provides that "[e]xcept as . . . otherwise provided by law, any person appointed by the Governor . . . may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer."

170. Executive Order 2017-364 abolishes the School Curriculum, Assessment and Accountability Council, the Reading Diagnostic and Intervention Grant Steering Committee, and the State Advisory Council for Gifted and Talented Education, causing the terms of each board's members to expire immediately.

171. Pursuant to KRS 158.6452(2), KRS 158.794(2), and KRS 158.648(1)(c), members of the education boards listed in the paragraph above serve statutorily-mandated terms of years.

172. These statutorily-mandated terms of years constitute other law that prevents the Governor from removing board members for any cause he deems sufficient.

173. Thus, in removing board members before the expiration of their statutorily-prescribed terms, the Executive Order violates KRS 63.080.

Count VIII
Declaratory Judgment

174. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

175. An actual and justiciable controversy exists among the parties as to whether:

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A. Kentucky Revised Statute 12.028 is constitutional as used by the Governor to "reorganize" independent state boards;

B. Governor Bevin in enacting Executive Order 2017-364 has violated Kentucky Constitution §§ 15, 27-29, and 81, KRS 12.028, and the statutes governing and structuring the education boards affected by his order;

C. Executive Order 2017-364 is null and void because KRS 12.028 is unconstitutional and/or the order violates the Kentucky Constitution and Kentucky Revised Statutes;

176. The Attorney General is entitled to a declaratory judgment on behalf of the Commonwealth that:

A. The Governor's use of KRS 12.028 violates the Kentucky Constitution as to independent state boards;

B. Governor Bevin in enacting Executive Order 2017-364 has violated Kentucky Constitution §§ 15, 27-29, and 81, KRS 12.028, and the statutes governing and structuring the education boards affected by his order; and

C. Executive Order 2017-364 is null and void because KRS 12.028 is unconstitutional and/or the order violates the Kentucky Constitution and Kentucky Revised Statutes.

Count IX
Permanent Injunctive Relief

177. The Attorney General incorporates by reference each and every allegation previously set forth in this Complaint as if fully set forth herein.

178. As described above, the Attorney General, on behalf of the Commonwealth, is entitled to further relief in the form of permanent injunctive relief restraining and enjoining the

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Defendants, and all their agents, attorneys, and any other persons in active concert or participation with them, from implementing, enforcing, or otherwise acting under Executive Order 2017-364.

179. By reason of the actions and violations described above, the Commonwealth has suffered injury and will continue to so suffer unless and until the Defendants are permanently enjoined from such activity by Order of this Court.

180. Plaintiff has no adequate remedy at law or otherwise to address this injury, save in a court of equity.

181. No previous application for an injunction has been refused by any court.

182. The Attorney General on behalf of the Commonwealth is entitled to further relief as may be shown by the evidence and legal authority that may be presented in this proceeding. The Attorney General reserves his right to amend this Complaint, as necessary, to request any further relief that he is entitled to seek.

WHEREFORE, the Attorney General demands judgment against the Defendants as set forth in his Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General, on behalf of the Commonwealth, demands as follows:

I. That this Court issue a declaration and order that:

A. The Governor's use of KRS 12.028 violates the Kentucky Constitution as to independent state boards;

B. Governor Bevin in enacting Executive Order 2017-364 has violated Kentucky Constitution §§ 15, 27-29, and 81, KRS 12.028, and the statutes governing and structuring the education boards affected by his order; and

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C. Executive Order 2017-364 is null and void because KRS 12.028 is unconstitutional and/or the order violates the Kentucky Constitution and Kentucky Revised Statutes;

II. That this Court issue a permanent injunction restraining and enjoining the Defendants, and all their agents, attorneys, representatives, and any other persons in active concert or participation with them, from implementing, enforcing, or otherwise acting under Executive Order 2017-364; and

III. That the Attorney General be awarded any and all other relief to which he may appear entitled, including his attorneys' fees and costs.

DATE: June 20, 2017

Respectfully Submitted,

COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

By: /s/ *La Tasha Buckner*

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Exhibit A

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EXHIBIT A

Date	Executive Order	State Boards
April 20, 2016	Executive Order 2016-0210	Tourism Development Finance Authority
April 27, 2016	Executive Order 2016-0229	Kentucky Horse Racing Commission
May 9, 2016	Executive Order 2016-0256	Workers' Compensation Nominating Commission
May 16, 2016	Executive Order 2016-0270	Kentucky Boxing and Wrestling Commission
May 24, 2016	Executive Order 2016-0281	Kentucky Horse Park Commission
June 13, 2016	Executive Order 2016-0319	Workers' Compensation Nominating Commission
June 17, 2016	Executive Order 2016-0338; Executive Order 2016-0339	University of Louisville Board of Trustees
June 17, 2016	Executive Order 2016-0340	Kentucky Retirement Systems Board of Directors
July 5, 2016	Executive Order 2016-0494	Kentucky Horse Racing Commission
July 13, 2016	Executive Order 2016-0513	Kentucky Communications Network Authority
August 9, 2016	Executive Order 2016-0576	Board of Claims; the Crime Victim Compensation Board; the Kentucky Board of Tax Appeals
October 4, 2016	Executive Order 2016-0730	Kentucky State Fair Board
November 21, 2016	Executive Order 2016-0824	Kentucky Arts Council
November 21, 2016	Executive Order 2016-0832	Public Service Commission
November 29, 2016	Executive Order 2016-0849	Kentucky Board of Housing, Buildings and Construction; Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors; the Board of Boiler and Pressure Vessel Rules; the Manufactured Home Certification and Licensure Board; the Kentucky Single Family Dwellings Advisory Committee; the Electrical Advisory Committee; the Elevator Advisory Committee; and the State Plumbing Code Committee

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December 2, 2016	Executive Order 2016-0859	The Real Estate Commission; the Real Estate Appraisers Board; the Board of Auctioneers; the Kentucky Board of Home Inspectors
May 17, 2017	Executive Order 2017-0298	911 Services Board
June 2, 2017	Executive Order 2017-0334	Education Professions Standards Board; Kentucky Board of Education; School, Curriculum Assessment and Accountability Council; Council on Postsecondary Education; Standards and Assessments Process Review Committee; Reading Diagnostic and Intervention Grant Steering Committee; State Advisory Council for Gifted and Talented Education; State Advisory Panel for Exceptional Children

Totals: **19 Executive Orders** **37 State Boards Reorganized**

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Exhibit B

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MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

RECEIVED AND FILED
DATE June 16, 2017
4:45pm
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

Secretary of State
Frankfort
Kentucky

2017-364
June 16, 2017

RELATING TO THE REORGANIZATION OF VARIOUS EDUCATION BOARDS

WHEREAS, it is the obligation and charge of public servants to provide the citizens of this Commonwealth with an efficient and economical government structure, including oversight and regulations that are administered in a consistent, ethical and organized manner; and

WHEREAS, improved coordination and alignment of Kentucky's education and workforce development structures, initiatives, and policies is essential to increasing career opportunities and workforce participation in the state; and

WHEREAS, the demands and responsibilities of multiple boards, councils, and commissions related to education delivery within the Commonwealth have changed due to recent acts of the General Assembly, substantial transformation in the economy, and an ever-increasing demand for skilled and technical labor; and

WHEREAS, the current structure and membership provisions of many education boards and councils are unable to effectively address these demands, and increased expertise in the areas of curriculum and instruction, assessment, career and technical education, counseling and psychology, workforce development, business and industry, policy, law, and personnel leadership would benefit the development of education policy in Kentucky; and

WHEREAS, groundbreaking new legislation was passed during the 2017 session of the Kentucky General Assembly and signed by the Governor, including but not limited to, Senate Bill 1 and House Bill 520; and

WHEREAS, Senate Bill 1 does not contain a provision for the selection of the Chairperson and Vice-Chairperson of the Standards and Assessments Process Review Committee or a provision setting the number of years for the terms of the members; and

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MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2017-364
June 16, 2017

WHEREAS, Senate Bill 1 requires the Kentucky Board of Education to promulgate regulations for the administration of the new academic standards review process, and

WHEREAS, the Kentucky Board of Education bears the incredibly time-sensitive responsibility of promulgating regulations for a new school accountability system within the guidance and framework provided by Kentucky Senate Bill 1 (2017) and the federal Every Student Succeeds Act; and

WHEREAS, House Bill 520 gives Kentucky's local boards of education the rights and responsibilities of being charter school authorizers, including receiving, considering, and acting on charter applications, and provides for appeals of local board decisions to the Kentucky Board of Education; and

WHEREAS, it is essential that an advisory body be established immediately to provide expertise and guidance to the Kentucky Board of Education on matters relating to charter schools, including but not limited to charter school authorizers, applications, authorization, renewal, nonrenewal, revocation, and appeals; and

WHEREAS, the alignment and coordination of efforts among secondary schools, postsecondary institutions, and state government agencies and their joint efforts to prepare educators to teach in career, technical and work-ready programs at the high school level are critical to ensuring the success of these programs and the training of Kentucky's workforce; and

WHEREAS, in order to more adequately address the new legislation enacted by the General Assembly in the 2017 session, I have determined that the structures of the Kentucky Board of Education, the Council on Postsecondary Education, the Education Professional Standards Board, the School Curriculum, Assessment and Accountability Council, the State Advisory Council for Gifted and Talented Education, the State Advisory Panel for Exceptional

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MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2017-364
June 16, 2017

Children, and the Reading Diagnostic and Intervention Grant Steering Committee should be abolished, altered, or created in order to promote a greater diversity of experience among members and improved collaboration among key stakeholders, including an enhanced confluence of ideas, planning and efficiencies; and

WHEREAS, I have determined that the various education Boards and Councils should be altered to provide a more focused vision designed to provide all students in the Commonwealth with the opportunity to obtain the skills and education needed to pursue both academic degrees and career or technical certifications so that they may participate fully in the modern workforce; and

WHEREAS, Executive Order 2017-334 was signed and filed on June 2, 2017 and certain amendments are advisable so as to expressly make clear that federal law is complied with, and otherwise:

NOW, THEREFORE, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Kentucky Constitution, Sections 69 and 81, and KRS 12.028 and 12.029, do hereby Order and direct the following to take effect immediately:

I. Executive Order 2017-334 dated June 2, 2017 is hereby rescinded and is superseded by this Order.

Charter Schools Advisory Council

II. The Charter Schools Advisory Council is hereby created as an advisory body to the Kentucky Board of Education, the School Curriculum, Assessment and Accountability Council, the Education Professional Standards Board, the Local Superintendents Advisory Council, and the Legislative Research Commission, to help ensure charter schools maintain the highest quality and provide resources to stakeholder groups regarding charter school activities.

III. There shall be nine (9) voting members of the Charter Schools Advisory Council who possess expertise in curriculum, instruction, finance, administration, assessment, and law, including three (3) members of the Kentucky Board of Education, one (1) member of the

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MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2017-364
June 16, 2017

School Curriculum, Assessment, and Accountability Council, and five (5) individuals who meet the following criteria:

1. One (1) parent of a school-aged child;
2. One (1) attorney having experience with education laws;
3. One (1) person with a business or finance background and;
4. Two (2) individuals with education policy expertise.

IV. Upon initial formation, the Governor shall select the Chairperson and Vice Chairperson of the Charter Schools Advisory Council and designate those members of the Kentucky Board of Education and the School Curriculum, Assessment, and Accountability Council who will serve on the Charter Schools Advisory Council for a term ending June 30, 2018. Thereafter, the Kentucky Board of Education and the School Curriculum, Assessment, and Accountability Council shall designate their members annually who will serve on the Charter Schools Advisory Council for terms beginning July 1 of each year.

V. The Charter Schools Advisory Council shall have the following duties:

1. Make recommendations to the Kentucky Board of Education for the adoption of regulations regarding all aspects of charter school operation, including time lines, standards, criteria for acceptance and approval of applications, monitoring of charter schools, appeals to the Kentucky Board of Education, and grounds for revocation of charters.

2. Review charter applications and make recommendations to the Kentucky Board of Education for final approval of charter applications.

3. Recommend actions relating to the appeals of charter applications, renewals of charters, non-renewals of charters, and revocations of charters.

4. Undertake any other duties and responsibilities delegated by the Kentucky Board of Education or as established via legislation of the General Assembly.

VI. The Charter Schools Advisory Council shall be attached to the Kentucky Department of Education for administrative purposes and be provided suitable staff and resources to conduct its work. Upon request, the Commissioner of Education shall assign dedicated staff to assist the Charter Schools Advisory Council in the performance of its duties. Further, the Commissioner of Education shall assign a dedicated staff liaison to assist the Council in the performance of its duties and to act on his or her behalf in all instances of absence from meetings and functions necessary to the performance of its duties.

VII. The Governor shall appoint new members of the Charter Schools Advisory Council by Executive Order to initial terms as follows: Of the five (5) citizen members, three (3) persons shall serve three (3) year terms and two (2) persons shall serve two (2) year terms, beginning June 1, 2017. Thereafter, new appointees shall serve three (3) year terms.

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MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2017-364
June 16, 2017

Standards and Assessments Process Review Committee

VIII. The Standards and Assessments Process Review Committee created by Senate Bill 1 and established under KRS 158.6453 is hereby altered to include one (1) voting member of the Kentucky Board of Education, one (1) voting member of the School Curriculum, Assessment and Accountability Council, and (1) voting member of the Education Professional Standards Board, each of whom shall be appointed by the Governor and serve annual terms beginning June 1, 2017. Further, the Governor shall designate the Chairperson and Vice Chairperson to serve until the first regular meeting of Fiscal Year 2018-2019, and make the appointments by Executive Order.

Council on Postsecondary Education

IX. The Council on Postsecondary Education established under KRS 164.011 is hereby altered to consist of fifteen (15) voting members appointed by the Governor and confirmed by the Senate, including one (1) postsecondary faculty member, a postsecondary student member and thirteen (13) members from the state at-large, one of whom may also serve as a non-voting advisor to the Kentucky Board of Education. Additionally, the Commissioner of Education shall serve as an ex-officio non-voting member of the Council.

X. All appointments shall be made in accordance with KRS 164.011, except that the faculty and student members shall not be subject to restrictions based on race, sex, geography, or political affiliation.

XI. The President of the Council on Postsecondary Education shall serve as executive secretary of the Council and attend all meetings. Subject to approval of the Council, the president may designate staff to record minutes and facilitate his or her duties. Further, the Council may appoint an administrative coordinator, who shall act as ombudsman for members, and whose salary shall be borne by the Council on Postsecondary Education.

XII. All persons serving unexpired terms upon the effective date of this Order shall serve in an appointed position for the remainder of their individual terms as they existed prior to the filing of this Order. The Governor shall appoint members by Executive Order.

Kentucky Board of Education

XIII. The Kentucky Board of Education established under KRS 156.029 is hereby altered to include four (4) non-voting advisors. Each of these non-voting advisors shall be designated by the Governor and must meet one of the following qualifications: (1) a member of the Council on Postsecondary Education; (2) a member of the Education Professional Standards Board; (3) a member of the School Curriculum, Assessment and Accountability Council; (4) a member of the Charter Schools Advisory Council; or (5) a member meeting a qualification set forth in paragraph XIV below. These non-voting advisors are not to be considered Members of the Board but are entitled to be present at all meetings, including closed sessions, and to be fully heard and to participate in all topics of discussion.

XIV. Of the persons appointed and serving as members of the Kentucky Board of Education, at least one (1) member shall be a parent of a public school child at the time of appointment,

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at least four (4) persons shall possess a minimum five (5) years of experience within the field of education, including one (1) member with background as a faculty member of a postsecondary institution. Further, at least four (4) persons shall possess a minimum five (5) years of leadership experience within business, including one (1) member with a background as an entrepreneur who has employed ten (10) or more persons.

XV. During the final regular meeting in each fiscal year, in addition to choosing a chairperson, the Board shall designate from among its members one (1) member to serve as Vice Chairperson, and three (3) members to serve on the Charter Schools Advisory Council, except that upon filing of this Order, the Governor shall designate the members to serve on the Charter Schools Advisory Council until the first regular meeting of Fiscal Year 2018-19.

XVI. The Commissioner of Education shall serve as executive secretary to the Kentucky Board of Education and attend all meetings. Subject to approval of the Kentucky Board of Education, the commissioner may designate staff to record minutes and facilitate his or her administrative duties. Further, the Kentucky Board of Education may also appoint an administrative coordinator, who shall act as ombudsman for the members, and whose expenses shall be borne by the Department of Education.

XVII. All persons serving unexpired terms upon the effective date of this Order shall serve in an appointed position for the remainder of their individual terms as they existed prior to the filing of this Order. The terms of the four (4) non-voting advisors designated pursuant to Executive Order are one (1) year.

School Curriculum, Assessment and Accountability Council

XVIII. The School Curriculum, Assessment and Accountability Council (hereinafter referred to as "SCAAC") established under KRS 158.6452 is hereby abolished. The terms of members serving on SCAAC prior to the filing date of this Order cease to exist, except as hereinafter expressly provided.

XIX. SCAAC is hereby created to study, assess and audit Kentucky's system of setting academic standards, establishing curriculum, assessing learning, identifying academic competencies and deficiencies of individual students, holding schools accountable for student achievement, and assisting schools to improve their performance.

XX. SCAAC shall report and recommend to the Education and Workforce Development Cabinet, the Kentucky Board of Education, the Legislative Research Commission, and the Education Professional Standards Board, critical data related to academic expectations, curriculum, core content for assessment, the development and deployment of statewide assessment and accountability programs, recognition of high performing schools, the imposition of school or district sanctions, and assistance for schools to improve their performance under KRS 158.6453, 158.6455, 158.6459, 158.782 and 158.805.

XXI. SCAAC shall be comprised of fifteen (15) voting members, with the Secretary of Education & Workforce Development, or his designee, and the Commissioner of

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Education serving in ex officio voting capacities, along with the following thirteen (13) voting members appointed by the Governor:

1. One (1) parent or member-at-large;
2. One (1) elementary, middle or high school teacher with responsibility for teaching English, social sciences, or humanities;
3. One (1) public school principal;
4. One (1) public school superintendent;
5. One (1) local Board of Education member;
6. One (1) science, technology, engineering, or mathematics teacher;
7. One (1) school district assessment coordinator;
8. One (1) gifted and talented teacher or administrator;
9. One (1) exceptional education teacher or administrator;
10. One (1) educator representing career and technical programs;
11. One (1) postsecondary education member with expertise in assessment;
12. One (1) private sector representative with workforce experience; and
13. One (1) dual appointee of the Education Professional Standards Board.

The Governor may also designate from these members one member that will serve as a non-voting advisor to the Kentucky Board of Education.

XXII. SCAAC shall be attached to the Kentucky Department of Education for administrative purposes and be provided suitable staff and resources to conduct its work. Upon request of SCAAC, the Commissioner of Education shall assign dedicated staff to assist SCAAC in the performance of its duties. Further, the Commissioner of Education shall assign a dedicated staff liaison to assist SCAAC in the performance of its duties and to act on his or her behalf in all instances of absence from SCAAC meetings and functions.

XXIII. To the extent permitted by law, SCAAC is authorized to request and receive data from any state or local government agency in the Commonwealth deemed necessary to fulfill the requirements of its mission, including any entity which derives a substantial portion of its funding from public sources.

XXIV. The Governor shall appoint new members by Executive Order to initial terms as follows: Four (4) members shall serve two (2) year terms, four (4) members shall serve three (3) year terms, and four (4) members shall serve four (4) year terms, beginning June 1, 2017. The dual member shall serve a term of two (2) years. Further, the Governor shall designate the chairperson and vice- chairperson to serve until the first regular meeting of Fiscal Year 2018-2019.

Education Professional Standards Board

XXV. The Education Professional Standards Board (EPSB) established under KRS 161.028 is hereby abolished. The terms of members serving on the Board prior to the filing date of this Order shall expire and cease to exist, except as hereinafter expressly provided.

XXVI. The Education Professional Standards Board is hereby created and shall be comprised of fifteen (15) members, with the President of the Council on Postsecondary Education, or his

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designee, and the Commissioner of Education, or his designee, serving in Ex Officio voting capacities. Further, the Governor shall appoint the following thirteen (13) voting members, subject to Senate confirmation:

1. One (1) elementary school teacher
2. One (1) middle school teacher;
3. One (1) high school teacher;
4. One (1) science, technology, engineering, or mathematics teacher;
5. One (1) arts and humanities teacher;
6. One (1) exceptional education teacher;
7. One (1) career and technical education professional;
8. One (1) principal or school administrator;
9. One (1) school counselor or psychologist;
10. One (1) faculty member of a private postsecondary institution;
11. One (1) faculty member of a public postsecondary institution;
12. One (1) dual appointee of the School Curriculum, Assessment and Accountability Council.
13. One (1) parent or member-at-large.

The Governor may also designate from these members one member that will serve as a non-voting advisor to the Kentucky Board of Education.

XXVII. The EPSB shall be attached to the Education and Workforce Development Cabinet for administrative purposes and shall be headed by an executive director appointed by the Governor. The executive director shall possess broad experience in public education and teacher development. The executive director shall have those powers set forth in KRS 161.017 and be subject to annual employment review by the EPSB. Further, upon approval of the Governor, the EPSB may enter into an employment contract with the executive director not to exceed three (3) years.

XXVIII. All powers, duties, rights, responsibilities, records, equipment, staff, supporting budgets and other obligations or functions set forth in relevant provisions of law and applicable to the EPSB as it existed prior to the filing of this Order are hereby transferred to the surviving entity, except as otherwise expressly provided hereinafter.

XXIX. Any decision to issue, renew, revoke, reprimand, suspend, impose conditions upon, or any other actions regarding educator certification or credentials may be appealed to the Kentucky Board of Education within seven (7) days, which body should cause the case to be reviewed and answered within thirty (30) days in a manner prescribed by its Board.

XXX. The Kentucky Board of Education shall be given thirty (30) days to review and approve all proposed administrative regulations of the EPSB prior to promulgation in a manner prescribed by the State Board, notwithstanding those filed with an emergency clause.

XXXI. The Governor shall appoint new members by Executive Order to initial terms as follows: Four (4) members shall serve two (2) year terms, four (4) members shall serve three (3) year terms, and four (4) members shall serve four (4) year terms, beginning June 1, 2017. The dual member shall serve a term of two (2) years. The Governor shall select the

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Chairperson and Vice Chairperson of the committee to serve until the first regular meeting of Fiscal Year 2018-2019.

Reading Diagnostic and Intervention Grant Steering Committee

XXXII. The Reading Diagnostic and Intervention Grant Steering Committee established under KRS 158.794 is hereby abolished. The terms of members serving on the committee prior to the filing date of this Order shall expire and cease to exist, except as hereinafter expressly provided.

XXXIII. The Read to Achieve Advisory Council ("RTA Council") is hereby created and for the purpose of implementing and overseeing the reading diagnostic and intervention fund created by KRS 158.792.

XXXIV. The RTA Council shall be comprised of fifteen (15) members, including the Secretary of the Education and Workforce Development Cabinet or designee who shall serve as a voting Ex Officio member; and four (4) Ex Officio non-voting members designated by the Commissioner of Education, the Collaborative Center for Literacy Development, the Education Professional Standards Board, and the School Curriculum, Assessment and Accountability Council. The Governor shall appoint the following ten (10) voting members, who shall possess specific background in the areas of reading and literacy:

1. One (1) parent;
2. One (1) elementary teacher;
3. One (1) middle or high school teacher;
4. One (1) special education teacher;
5. One (1) gifted and talented teacher;
6. One (1) university or college professor;
7. One (1) speech-language pathologist;
8. One (1) librarian or certified media specialist;
9. One (1) reading intervention teacher or administrator;
10. One (1) member who has experience assisting deaf and hearing-impaired children.

XXXV. The RTA Council shall be attached to the Kentucky Department of Education for administrative purposes and be provided suitable staff and resources to conduct its work. Upon request of the RTA Council, the Commissioner of Education shall assign dedicated staff to assist the RTA Council in the performance of its duties. Further, the Commissioner of Education shall assign a dedicated staff liaison to assist the RTA Council in the performance of its duties and to act on his or her behalf in all instances of absence from the RTA Council meetings and functions.

XXXVI. The Governor shall appoint new members by Executive Order to initial terms as follows: Four (4) members shall serve two (2) year terms, four (4) members shall serve three (3) year terms, and two (2) members shall serve four (4) year terms, beginning June 1, 2017. Further, the Governor shall designate the Chairperson and the Vice Chairperson to serve until the first regular meeting of Fiscal Year 2018-2019.

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State Advisory Council for Gifted and Talented Education

XXXVII. The State Advisory Council for Gifted and Talented Education created by KRS 158.648 is hereby abolished. The terms of members serving on the committee prior to the filing date of this Order shall expire and cease to exist, except as hereinafter expressly provided.

XXXVIII. The State Advisory Council for Gifted and Talented Education is hereby created for the purpose of making recommendations regarding the provision of educational services for gifted and talented students in the Commonwealth.

XXXIX. The State Advisory Council for Gifted and Talented Education shall be comprised of fifteen (15) members, including an Ex Officio non-voting designee of the Commissioner of Education, the Education Professional Standards Board, the School Curriculum, Assessment and Accountability Council, and the president of the Council on Postsecondary Education. The Governor shall appoint the following eleven (11) voting members, who shall possess specific experience or background in the areas of gifted and talented education:

1. One (1) elementary teacher;
2. One (1) middle or high school teacher;
3. One (1) gifted and talented program coordinator;
4. One (1) parent of a gifted or talented child;
5. One (1) science, technology, engineering, or mathematics teacher;
6. One (1) arts and humanities teacher;
7. One (1) school counselor or psychologist;
8. One (1) superintendent or district assessment coordinator;
9. One (1) faculty member of a private postsecondary institution;
10. One (1) faculty member of a public postsecondary institution; and
11. One (1) member at-large who shall not be an active educator;

XL. The State Advisory Council for Gifted and Talented Education shall be attached to the Kentucky Department of Education for administrative purposes and be provided suitable staff and resources to conduct its work. Upon request of the State Advisory Council for Gifted and Talented Education, the Commissioner of Education shall assign dedicated staff to assist the State Advisory Council for Gifted and Talented Education in the performance of its duties. Further, the Commissioner of Education shall assign a dedicated staff liaison to assist the State Advisory Council for Gifted and Talented Education in the performance of its duties and to act on his or her behalf in all instances of absence from the State Advisory Council for Gifted and Talented Education meetings and functions.

XLI. The Governor shall appoint new members by Executive Order to initial terms as follows: Four (4) members shall serve two (2) year terms, four (4) members shall serve three (3) year terms, and three (3) members shall serve four (4) year terms, beginning June 1, 2017. Further, the Governor shall designate the Chairperson and the Vice Chairperson to serve until the first regular meeting of Fiscal Year 2018-2019.

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State Advisory Council for Exceptional Children

XLII. The State Advisory Panel for Exceptional Children created by Executive Order 1995-1295 is hereby abolished. The terms of members serving on the Panel prior to the filing date of this Order are expired.

XLIII. The State Advisory Council for Exceptional Children is hereby created.

XLIV. The State Advisory Council for Exceptional Children shall be comprised of at least fifteen (15) and not more than twenty-one (21) voting members appointed by the Governor as follows, the majority of whom shall be individuals with disabilities or parents of children with disabilities ages birth through 26. The Governor shall appoint members that meet the following qualifications:

1. Two (2) individuals with disabilities or exceptional needs;
2. One (1) parent of an exceptional child ages birth through 12 years;
3. One (1) parent of an exceptional child ages 13 through 26 years;
4. One (1) elementary special education teacher;
5. One (1) middle or secondary special education teacher;
6. One (1) higher education member who trains and prepares special education teachers;
7. One (1) private sector administrator of programs for exceptional children;
8. One (1) local education administrator of programs for exceptional children, who shall also be experienced with the McKinney-Vento Act;
9. One (1) child welfare agency member responsible for foster care;
10. At least one (1) representative of state juvenile or adult correction agencies involved in the delivery of services to disabled children;
11. One (1) state education official who carries out activities associated with the McKinney-Vento Homeless Assistance Act;
12. At least one (1) state agency member involved in the financing or delivery of services to children with disabilities;
13. One (1) member of vocational, community or business organizations concerned with the provision of services to disabled children;
14. At least one (1) representative of private schools or public charter schools; and
15. Up to six (6) additional members meeting the requirements of the Individuals with Disabilities Act (IDEA) as articulated in 20 USC 1412.

XLV. The State Advisory Council for Exceptional Children shall have the following duties:

1. Advise the Department of Education, Board of Education, Education Professional Standards Board, and School Curriculum, Assessment and Accountability Council of unmet needs and desired program changes within the Commonwealth related to the education of children with disabilities, including the suggestion of corrective action plans and personnel development needs;

2. Review and comment on rules or regulations proposed by the Commonwealth relating to the education of children with disabilities and the procedures for distribution of funds under Part B of Public Law 101-476;

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3. Review and comment on written findings of fact and decisions from due process hearings, including other reports issued by federal and state authorities relating to exceptional children;

4. Advise the Kentucky Department of Education, the Justice Cabinet and other public agencies on eligible students with disabilities in state and local prisons;

5. Provide opportunities for public input through regularly scheduled public hearings or during general meetings.

XLVI. The State Advisory Council for Exceptional Children shall be attached to the Kentucky Department of Education for administrative purposes and be provided suitable staff and resources to conduct its work. Upon request of the State Advisory Council for Exceptional Children, the Commissioner of Education shall assign dedicated staff to assist the Council in the performance of its duties.

XLVII. The Governor shall appoint new members by Executive Order to initial terms as follows: Up to Seven (7) members shall serve two (2) year terms, up to seven (7) members shall serve three (3) year terms, and up to seven (7) members shall serve four (4) year terms, beginning June 1, 2017. Further, the Governor shall designate the Chairperson and the Vice Chairperson to serve until the first regular meeting of Fiscal Year 2018-2019.

General Provisions:

XLVIII. Excluding the Kentucky Board of Education and Council on Postsecondary Education, whose members and terms are not affected, the terms of all persons serving on the boards and councils hereto upon the filing date of this Order, and not appointed to a new position by Executive Order of the Governor hereafter, shall expire.

XLIX. Except for the Kentucky Board of Education and the Council on Postsecondary Education successive members, whose members and terms are not affected, or otherwise provided in this Order, successive members of the Boards and Councils hereto shall serve for a term of three (3) years, subject to not more than two consecutive terms, and if required by statute, be submitted for senate confirmation in accordance with KRS 11.160.

L. On making appointments, the Governor shall strive for broad geographic, racial, political, and gender diversity among members.

LI. Board or council members shall meet at least four (4) times annually at places and dates to be determined by resolution of the board or council.

LII. In the event of anticipated absences, ex officio members may appoint a proxy by written communication to the secretary of the board or council. Such designees shall not be eligible for expense reimbursement but shall be entitled to full participation rights. Except for ex-officio appointees, any member who misses three consecutive meetings may be removed from office and the Governor shall replace such member according to law.

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LIII. At the first regular meeting of the board or council in the fiscal year beginning July 1, 2018, a chairperson and vice chairperson shall be selected from among the citizen appointees by all voting members. New officers shall begin presiding at the first meeting of the board or council in each fiscal year. Further, any internal policies and procedures shall also be reviewed and adopted annually during the final meeting of the fiscal year by resolution of the entire board or council. However, no policy or procedure adopted shall be construed to prevent new members from full participation rights or from serving as officers, nor shall any policy or procedure be contrary to public law or proper rules of order and conduct.

LIV. All members and non-voting advisors shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. Furthermore, public employee members shall serve without remuneration, but may attend meetings and perform other board or council business without loss of income or benefits. Any state agency, school district, public university or political subdivision of the Commonwealth which is required to hire a substitute for a member who is absent from his or her place of employment while performing board or council business shall be reimbursed for the actual amount of any costs incurred if a written request for reimbursement is made to the board or council within thirty (30) days.

LV. A vacancy on any board or council shall be filled in the same manner as the original appointment within ninety (90) days of official written notification to the Governor. Members whose terms have expired may continue to serve until reappointed or successors are named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he or she was appointed, shall no longer be eligible to serve in that position and shall be deemed removed without notice.

LVI. Unless otherwise stated, all duties, functions, responsibilities, records, equipment, staff, and supporting budgets of the referenced boards or councils as they existed prior to the filing of the attached Executive Order and all functions, rights, powers, duties, and obligations set forth in relevant provisions of law are hereby transferred to the surviving entity. All other provisions of law that apply to the boards or councils herein shall remain in full force and effect.

MATTHEW G. BEVIN, Governor
Commonwealth of Kentucky

ALISON LUNDERGAN GRIMES
Secretary of State

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REORGANIZATION PLAN

Due to substantial transformation in the economy and rapidly increasing demand for a highly skilled, technical and specialized workforce, there is an urgent and critical need to provide the emerging generation of students with the educational tools and resources necessary to become successful in a largely global and technology-based economy.

In attempting to plan and prepare for this constantly evolving economic environment, significant new legislation was passed during recent sessions of the General Assembly relating to school accountability, education and work readiness, including charter school initiatives, dual credit, career and technical training, additional student scholarship options, work-ready programs, apprenticeship, entrepreneurship, vocational education, enhanced teacher credentialing, and improved performance assessments.

In light of this new legislation, and subsequently because the responsibilities of many vital Boards and commissions related to the delivery of educational programs and services must change in order to adapt, it has become evident that the current structure and membership provisions of these entities have become outdated and are no longer equipped to address the transformational educational needs of our emerging students and burgeoning new workforce.

Therefore, in order to address these deficiencies and provide for the improved collaboration of ideas, planning and efficiencies among various stakeholder entities, including a greater diversity of experiences among Board members, urgent and compelling reasons now exist to expedite the executive reorganization of the following Boards and commissions:

Council on Postsecondary Education:

One appointee to the Council on Postsecondary Education will serve as a non-voting Advisor to the Kentucky Board of Education. The addition of this advisor is imperative to facilitating improved communication and coordination between secondary and postsecondary institutions, which will serve as a critical link for stronger outcomes and student success.

Kentucky Board of Education:

Four (4) non-voting advisors will be designated to participate fully in the Kentucky Board of Education meetings. These non-voting advisors must meet one of the following qualifications: (1) a member of the Council on Postsecondary Education; (2) a member of the Education Professional Standards Board; (3) a member of the School Curriculum, Assessment and Accountability Council; (4) a member of the Charter Schools Advisory Council; or (5) a member that shall be either a parent of a public school child at the time of appointment or possess a minimum five (5) years of experience within the field of education.

Additionally, member guidelines shall be enhanced to ensure that at least four (4) appointees have experience within education and at least four (4) appointees have private sector leadership experience. Composition of the Board will meet this standard with future appointments.

These changes reflect a pressing need to integrate the knowledge and expertise of those persons from the private business sector who will ultimately hire emerging students with the educators

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and teachers who are actually preparing them for the workforce as well as provide for closer coordination with other education boards

School Curriculum Assessment and Accountability Council:

The current Council is comprised of seventeen (17) members generally consisting of two (2) representatives from different educational backgrounds. While the restructured Council shall be comprised of fifteen (15) members with one (1) representative for each unique category, the reorganization substantially enhances the variety of specialties represented, including a "dual member" of the Education Professional Standards Board.

In addition to more diversified membership, the Executive Order provides the Council with several tools necessary to enhance its ability to assess curriculum and performance, including making the resources of the Education Cabinet available and directing that all public agencies provide requested data to the Council unless specific regulations would make doing so unlawful.

Education Professional Standards Board:

The current Board is comprised of seventeen (17) members with often duplicative educational backgrounds. While the restructured Board shall be comprised of fifteen (15) members with one (1) representative for each unique category, the reorganization enhances the variety of specialties represented, including a member who serves as an Ex Officio member of the Board of Education and one who serves as a voting member of the School Curriculum, Assessment and Accountability Council. Furthermore, to provide greater coordination between the EPSB and other education, boards, commissioners and state agencies, the Executive Director will be subject to the approval of the Governor and the board.

In addition to more diversified membership and greater collaboration with related educational entities, necessary state supervision and oversight shall be provided inasmuch as the Kentucky Board of Education shall be afforded final approval over certain actions of the Educational Professional Standards Board. Presently, the Board operates as an independent corporate body politic and is comprised of active market participants engaged in self-regulation with the power to issue and suspend licenses and discipline its licensees. Consequently, Board members are thereby exposed to potential anti-trust violations that can only be corrected via active state oversight.

State Advisory Council for Gifted and Talented Education:

The current Council is comprised of twenty-two (22) members with often duplicative educational backgrounds. While the restructured Council shall be comprised of fifteen (15) voting members with one (1) representative for each unique category, the reorganization enhances the variety of educational backgrounds and specialties represented, including participation by and collaboration with the Council on Postsecondary Education, the Education Professional Standards Board, the School Curriculum Assessment and Accountability Council, and the Department of Education.

Furthermore, the Department of Education and the Education Professional Standards Board shall continue to submit proposed administrative regulations and educational policies relating to gifted

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and talented education and other administrative regulations that impact students for review by the advisory Council prior to seeking final approval of the appropriate Board. However, this document clarifies that the Council shall have thirty (30) days to comment unless the proposed administrative regulations are adopted using an emergency clause.

State Advisory Council for Exceptional Children:

The current Board is comprised of twenty-six (26) members with often duplicative educational backgrounds. While the restructured Council shall be comprised of at least fifteen (15) and not more than twenty-one (21) voting members appointed by the Governor, with the majority of appointees being individuals with disabilities or parents of children with disabilities ages birth through 26. The reorganization enhances the variety of educational backgrounds and specialties represented, including participation by and collaboration with the Council on Postsecondary Education, the Education Professional Standards Board, the School Curriculum Assessment and Accountability Council, and the Department of Education.

Specifically, because the Council was originally created by executive order in 1995 to provide a state mechanism to help secure grant funds and comply with federal public law, there are no legislative approvals required to effect this change. Nonetheless, in addition to the need for more diversified membership and greater collaboration with related educational entities, the changes will result in greater attention being given to children with disabilities and special needs.

Reading Diagnostic and Intervention Grant Steering Committee:

The current steering committee is comprised of sixteen (16) members with often duplicative educational backgrounds. While the new committee will be reclassified as an advisory Council and consist of fifteen (15) members, the reorganization enhances the variety of educational backgrounds and specialties represented, including greater participation by and collaboration with the Department of Education, the Council on Postsecondary Education, the School Curriculum Assessment and Accountability Council, and the Education Professional Standards Board.

General Provisions:

All appointed members and non-voting advisors shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. In the event of any anticipated absences, ex-officio members may appoint a proxy by written communication to the secretary of the Board or Council. Such designees shall not be eligible for expense reimbursement but shall be entitled to full participation rights. Except for ex-officio appointees, any member missing three consecutive meetings shall be automatically removed from the Board or Council and the Governor may replace such member according to law.

Any internal policies and procedures shall also be reviewed and adopted annually during the final meeting of the fiscal year by resolution of the entire board or council. However, no policy or procedure adopted shall be construed to prevent new members from full participation rights or from serving as officers.

All boards or councils shall meet at least four (4) times annually at places and dates that shall be determined by resolution of the board or council.

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Any state agency, school district, public university or political subdivision of the Commonwealth required to hire a substitute for a member who is absent from his or her place of employment while performing Board or Council business shall be reimbursed by the Board or Council for the actual amount of any costs incurred if a request for reimbursement is made within thirty (30) days.

On making appointments, the Governor shall strive for broad geographic, racial, political and gender diversity among members. All appointees shall serve terms of three (3) years with no member serving more than two (2) consecutive terms, with exception of the Kentucky Board of Education and the Council on Postsecondary Education, whose terms shall remain unchanged.

Unless otherwise stated, all duties, functions, responsibilities, records, equipment, staff, and supporting budgets of the referenced boards or councils as they existed prior to the filing of the attached Executive Order and all functions, rights, powers, duties, and obligations set forth in relevant provisions of law are hereby transferred to the surviving entities. All other provisions of law applying to the boards herein shall remain in full force and effect and are hereby reaffirmed.

Fiscal Impact:

Changes being implemented by the attached Executive Order are expected to have minimal fiscal impact. Expenses relating to the affected Boards are already borne by executive branch agencies and the Board members are reimbursed for travel and actual costs only. The majority of impacted Boards will see a small reduction in membership, which could lead to nominal savings. However, the addition of four (4) ex-officio members to the Kentucky Board of Education may cost an additional $100 per meeting per member. Overall, it is expected that the improved planning and coordination of these entities as a result of reorganization will drive management and oversight costs down due to the utilization of shared staff and resources.

Delivery Of Services:

It is expected that the improved planning and coordination of these entities afforded as a result of reorganization will drive management and oversight costs down due to the utilization of shared staff and resources. Moreover, it is believed that the confluence of membership and collaboration will considerably improve the delivery and alignment of services to all education stakeholders in the Commonwealth, including students, teachers, parents, and schools.

Personnel Impact:

Presently, personnel provided for the affected Boards or Councils is provided from various executive branch agencies. In some cases, the Executive Order will allow greater flexibility in appointing employees or designating shared staff and resources. The impact is expected to be minimal.

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Exhibit C

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Public Protection Cabinet

PROPOSED REORGANIZATION OF GENERAL GOVERNMENT LICENSING BOARDS

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Presenters

- David Dickerson, Secretary
- Gail Russell, Deputy Secretary
- Barry Dunn, General Counsel

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The Need for Reorganization

- Ensure Free Markets and Bolster Competition
- Promote Kentucky Professionals and Businesses
- Achieve Cost Savings
- Improve Compliance

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North Carolina State Board of Dental Examiners v. Federal Trade Commission

- 2015 U.S. Supreme Court decision.
- North Carolina Dental Board sent cease-and-desist letters to non-dentists that were engaging in teeth whitening practices.
- Boards comprised of market participants must be supervised by the state.
- "Market participants" include board members who hold active licenses in the field regulated by the board.

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North Carolina State Board of Dental Examiners v. Federal Trade Commission

Implications for State Licensing Boards:

- If a board is not actively supervised by the state, the board could be held liable for potential anti-trust actions.
- Potentially, board members may be subject to personal liability.
- Treble damages.

FTC Guidance

The following do not constitute "active state oversight" according to the FTC:

- The entity responsible for supervising the regulatory board is comprised of active market participants in the occupation the board regulates;
- A state official monitors the actions of the regulatory board but lacks the authority to disapprove anticompetitive acts;
- A state official serves as an ex-officio member of the board but lacks the authority to disapprove competitive acts;
- The state's attorney general or another state official provides advice to the regulatory board on an ongoing basis.

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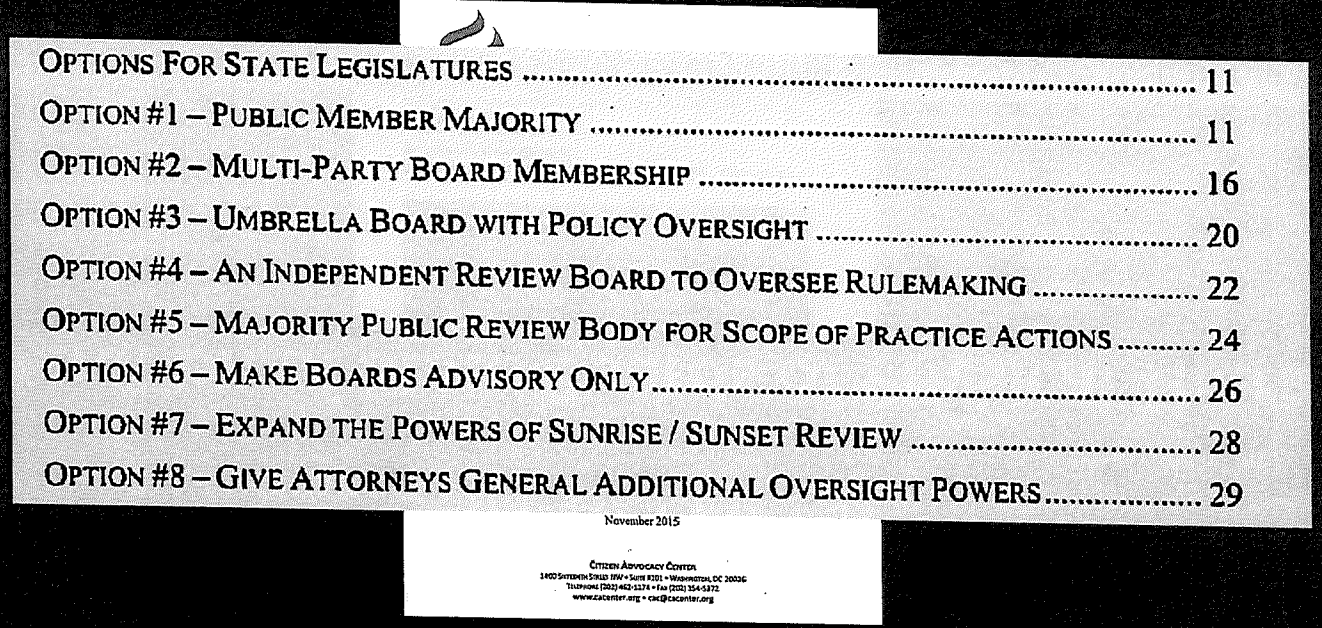
Organizations and Associations

Citizen Advocacy Center



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November 2015

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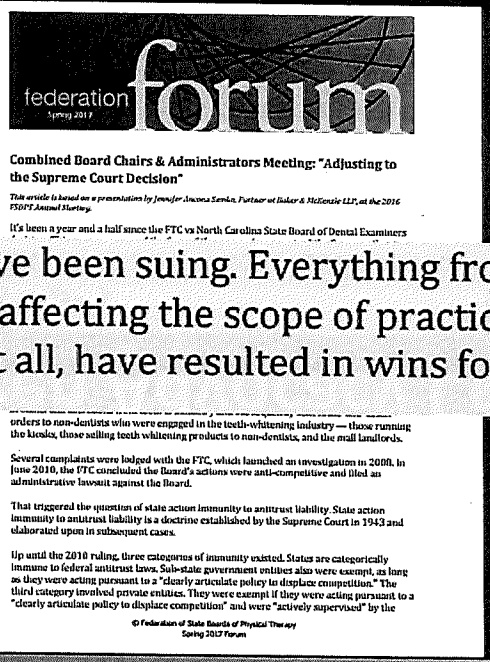
Organizations and Associations

Federation of State Boards of Physical Therapy



federation forum
Spring 2017

Combined Board Chairs & Administrators Meeting: "Adjusting to the Supreme Court Decision"

This article is based on a presentation by Jennifer Ancona Servia, Partner at Baker & McKenzie LLP, at the 2016 FSBPT Annual Meeting.

It's been a year and a half since the FTC vs North Carolina State Board of Dental Examiners

As was expected, litigants have been suing. Everything from a routine disciplinary action to a more significant broad rule affecting the scope of practice are potential targets for antitrust claims. Most, but not all, have resulted in wins for the boards.

orders to non-dentists who were engaged in the teeth-whitening industry — those running the kiosks, those selling teeth whitening products to non-dentists, and the mall landlords.

Several complaints were lodged with the FTC, which launched an investigation in 2008. In June 2010, the FTC concluded the Board's actions were anti-competitive and filed an administrative lawsuit against the Board.

That triggered the question of state action immunity to antitrust liability. State action immunity to antitrust liability is a doctrine established by the Supreme Court in 1943 and elaborated upon in subsequent cases.

Up until the 2010 ruling, three categories of immunity existed. States are categorically immune to federal antitrust laws. Sub-state government entities also were exempt, as long as they were acting pursuant to a "clearly articulate policy to displace competition." The third category involved private entities. They were exempt if they were acting pursuant to a "clearly articulate policy to displace competition" and were "actively supervised" by the

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Spring 2017 Forum

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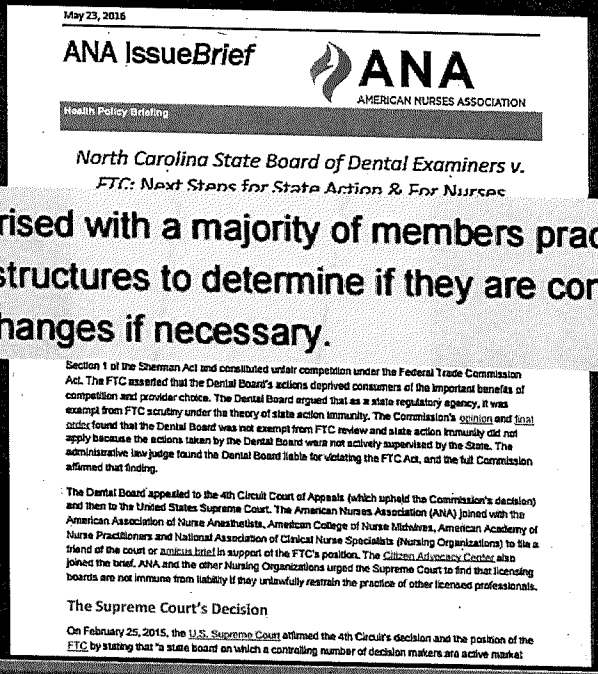
Organizations and Associations

American Nurses Association



May 23, 2016

ANA IssueBrief

ANA
AMERICAN NURSES ASSOCIATION

Health Policy Briefing

North Carolina State Board of Dental Examiners v. FTC: Next Steps for State Action & For Nurses

- States with boards comprised with a majority of members practicing in the profession will need to review their supervisory structures to determine if they are consistent with the guidance provided by the Court and make changes if necessary.

Section 1 of the Sherman Act and constituted unfair competition under the Federal Trade Commission Act. The FTC asserted that the Dental Board's actions deprived consumers of the important benefits of competition and provider choice. The Dental Board argued that as a state regulatory agency, it was exempt from FTC scrutiny under the theory of state action immunity. The Commission's opinion and final order found that the Dental Board was not exempt from FTC review and state action immunity did not apply because the actions taken by the Dental Board were not actively supervised by the State. The administrative law judge found the Dental Board liable for violating the FTC Act, and the full Commission affirmed that finding.

The Dental Board appealed to the 4th Circuit Court of Appeals (which upheld the Commission's decision) and then to the United States Supreme Court. The American Nurses Association (ANA) joined with the American Association of Nurse Anesthetists, American College of Nurse Midwives, American Academy of Nurse Practitioners and National Association of Clinical Nurse Specialists (Nursing Organizations) to file a friend of the court or amicus brief in support of the FTC's position. The Citizen Advocacy Center also joined the brief. ANA and the other Nursing Organizations urged the Supreme Court to find that licensing boards are not immune from liability if they unlawfully restrain the practice of other licensed professionals.

The Supreme Court's Decision

On February 25, 2015, the U.S. Supreme Court affirmed the 4th Circuit's decision and the position of the FTC by stating that "a state board on which a controlling number of decision makers are active market

Other States

Illinois

Indiana

Ohio

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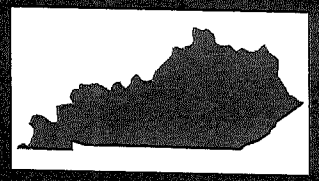
Reorganization Plan



- State licensing boards will maintain individual identity.
- Similar licensing boards will be grouped together for purposes of oversight, staffing, and administrative support.
- The executive director, employed by the Public Protection Cabinet (PPC), will provide active state supervision to each group.
- Each board will continue to regulate and license its respective profession with oversight from the executive director and commissioner of the Department of Professional Licensing within PPC.

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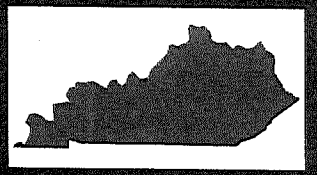
Reorganization Plan



Each individual licensing board will have the authority to:

- **Grant Licenses**
  - Licensing appeals will be considered by the executive director.
- **Promulgate Administrative Regulations**
  - Regulatory changes will be recommended by the individual licensing boards and reviewed by the executive director to either approve or send back to the board with suggested revisions.
- **Initiate Disciplinary Actions**
  - Individual licensing boards may initiate disciplinary actions. Upon request, disciplinary appeals shall be reviewed by the Executive Director, subject to KRS 13B.

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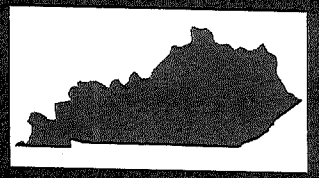
Reorganization Plan



- Board Members:
  - Any changes in board membership or composition will be realized over time.
- Staff:
  - Classified staff will become employees of PPC.
  - Interested individuals may apply for executive director or administrative coordinator positions.
- Budgets:
  - The board will continue to propose a budget with oversight from the executive director.
- Licensing Fees:
  - Licensing fees will not be impacted by the proposed reorganization and shall continue to be set by the boards.

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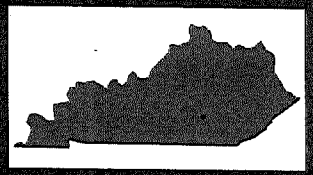
Advantages



- Active State Supervision
  - Cabinet Structure
  - Budgets
  - Personal Services Contracts
- Efficiencies
- Cost Savings
- Ensuring Competitive State Markets

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Proposed Oversight Groups

Medical
State Board of Medical Licensure

Nursing
Board of Nursing

Health Equipment
Ky. Board of Prosthetics, Orthotics & Pedorthics
Ky. Board of Medical Imaging and Radiation Therapy
Ky. Board of Ophthalmic Dispensers
Ky. Board of Durable Medical Equipment Suppliers
Ky. Licensing Board for Specialists in Hearing Instruments

General Health
Ky. Board of Dentistry
Ky. Board of Optometric Examiners
State Board of Podiatry
Ky. Board of Pharmacy
Ky. State Board of Chiropractic Examiners
Ky. Board of Examiners of Psychology

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Proposed Oversight Groups

Health Maintenance and Restoration

Board of Physical Therapy

Board of Occupational Therapy

Board of Speech-Language Pathology & Audiology

Board of Respiratory Care

Ky. Board of Licensure for Massage Therapy

Ky. Board of Licensure and Certification for Dieticians and Nutritionists

Ky. Board of Interpreters for the Deaf and Hard of Hearing

Ky. Board of Licensed Diabetes Educators

Behavioral Health and Human Services

Ky. Board of Alcohol and Drug Counselors

Ky. Board of Licensed Professional Counselors

Ky. Board of Licensure for Marriage and Family Therapists

Ky. Board of Social Work

Ky. Applied Behavior Analysis Licensing Board

Ky. Board of Licensure for Professional Art Therapists

Ky. Board of Licensure for Pastoral Counselors

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Proposed Oversight Groups

General Professional Licensing

Board of Embalmers and Funeral Home Directors

State Board of Accountancy

Ky. Board of Veterinary Examiners

Ky. Board of Licensure for Private Investigators

Ky. Board of Licensure for Long-Term Care Administrators

Ky. Board of Barbering

Ky. Board of Hairdressers and Cosmetologists

Land Development

Ky. Board of Architects

Ky. Board of Landscape Architects

State Board of Licensure for Professional Engineers and Land Surveyors

Board of Registration for Professional Geologists

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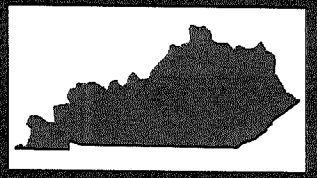
Stakeholder Meetings



- Goals:
  - Transparency and Accessibility
  - Dialogue
  - Correct Misinformation
- Results:
  - 38 of 39 Boards
  - Board Members, Licensees, Associations, Trade Groups, Executive Directors, and Staff
  - Q&A
  - Follow-Up

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Questions

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