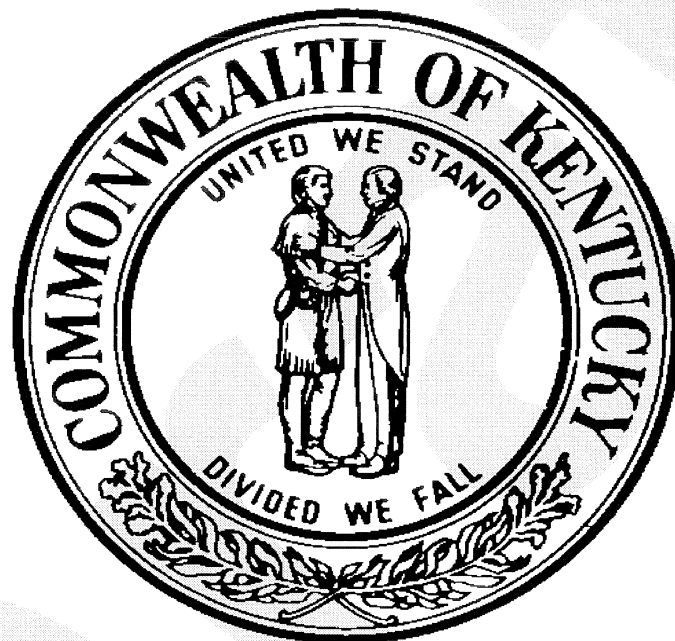


**KENTUCKY GENERAL ASSEMBLY  
OFFICE OF EDUCATION ACCOUNTABILITY**

---



**2002 ANNUAL REPORT:  
ISSUES AND OPTIONS  
FOR FURTHER LEGISLATIVE ACTION**



**Introduction**

---

KRS 7.410(2)(c)(8) requires the Office of Education Accountability (OEA) to “prepare an annual report on the implementation of the provisions of the Kentucky Education Reform Act of 1990. . . including recommendations for improvement which shall be submitted to the Education Assessment and Accountability Review Subcommittee.” In years prior to 2000, the annual report prepared by the Office of Education Accountability was submitted to the Interim Joint Committee on Education, but in 2000, KRS 7.410 was amended, placing oversight responsibility for OEA with the Education Assessment and Accountability Review Subcommittee.

Since the establishment of this oversight arrangement, staff from OEA have worked with the subcommittee to develop a clarified process for developing and reporting findings in the annual report. In addition, prior reports have contained the finance report required by KRS 7.410(2)(c)(2). Beginning in 2002 the reports have been separated, and a new reporting format has been developed for this report.

I would like to thank the dedicated staff of OEA, who have worked diligently and provided valuable input into the preparation of this report. All have made important contributions to the quality of the work reflected in the pages to follow.

**Kenneth J. Henry, Ed.D.**  
***Director of the Office of Education Accountability***  
***Deputy Director, Legislative Research Commission***

**Table of Contents**

---

*Introduction*..... i

*Issue: Should the General Assembly clarify the language of KRS 160.345(2)(b)(1) pertaining to teacher elections for school councils?* .....1

*Issue: Should the General Assembly consider revising KRS 160.345(9)(a) pertaining to violations of the school-based decision making process?* .....5

*Issue: Should the General Assembly consider making changes to KRS 160.380(2)(b) and (c) pertaining to filling certified vacancies?* .....8

*Issue: Should the General Assembly consider revising KRS 159.080, 159.130, and 159.140 pertaining to Directors of Pupil Personnel?* .....12

*Issue: Should the General Assembly consider revising KRS 160.500 pertaining to the cost of collecting school taxes?* .....16

*Issue: Should the General Assembly enact statutory language assigning specific responsibility for monitoring the activities of educational cooperatives for statutory and regulatory compliance and establishing procedures for handling violations?* .....25

**Issue: Should the General Assembly clarify the language of KRS 160.345(2)(b)(1) pertaining to teacher elections for school councils?**

---

**Background**

---

Currently KRS 160.345(2)(b)(1) states:

*The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal or head teacher shall be the chair of the school council.*

A high percentage of complaints related to the school-based decision making initiative received by the Office of Education Accountability (OEA) allege principal interference, coercion, or intimidation in teacher elections. Between May 2001 and August 2002 OEA received 16 complaints related to the teacher election process. Eight of these complaints were received via OEA's hotline, coming during the closing hours or just after the completion of the teacher elections. Nine written complaints alleging interference with the teacher election process were also filed. OEA is currently pursuing resolution of a situation in which a school principal has interfered in three separate council elections, 2 of which were teacher elections.

The statutory language has led to some confusion related to the conduct of teacher elections, particularly where allegations of interference, coercion, or intimidation by the school's principal are concerned. While it has been the opinion of both OEA and the Kentucky Department of Education (KDE) that school administrators should play no role in teacher elections, the principles of statutory construction could lead one to a different conclusion. By stating that the parent teacher organization is to conduct the election of parents, the General Assembly clearly mandated that parents, not the school administration, are responsible for parent elections to school councils. This is not the case for teacher elections. By leaving out the language that teachers are to conduct elections for the teacher positions on school councils, the General Assembly may have opened the door to a challenge of the OEA/KDE interpretation by school administrators who have been found in violation of KRS 160.345(2)(b)(1) for interference in teacher elections. Such a challenge would be based on the fact that the General Assembly included the clear mandate that parents should conduct their own elections but, by choice, included no mandate pertaining to teacher elections.

Overall, the statutory language enacted in KRS 160.345 reflects an intent by the General Assembly to carve out a sphere of responsibility as it relates not only to the entire educational enterprise, but also to school-based decision making. The shared decision

**Kentucky General Assembly**  
**Office of Education Accountability**

---

making process is certainly in keeping with the overall intent of the Kentucky Education Reform Act of 1990 (KERA); that is, to distribute spheres of responsibility among the various responsible parties in the educational process.

In *Board of Education of Boone County v. Bushee, et al.*, 889 S.W.2d 809 (1994), the Kentucky Supreme Court spoke directly to this point:

The essential strategic point of KERA is the decentralization of decision making authority so as to involve all participants in the school system, affording each the opportunity to contribute actively to the educational process. The language of KRS 158.645 overwhelmingly reflects this intention.

The General Assembly recognizes that public education involves *shared responsibilities*. State government, local communities, parents, students, and school employees must work together to create an efficient public school system.... The cooperation of all involved is necessary to assure that desired outcomes are achieved. (Emphasis added in original).

Id. at 812. The concept of decentralized decision making ability continues down to the individual schools councils. Id. at 813.

KDE provides technical assistance regarding the conduct of teacher elections. The “School Council Election Fact Sheet—May 2001” states in regard to teacher elections: “Teachers must be elected by a majority of teachers in an election *conducted by teachers*.” (Emphasis added). <http://www.kde.state.ky.us/olsi/leaders/sbdm/resource.asp>. In fact, KRS 160.345(2)(b)(1) cited in the “School Council Election Fact Sheet—May 2001” does not state that teachers must conduct the election of teachers to the school council. OEA and KDE agree on this interpretation, even though the statutory language does not explicitly contain such a mandate.

Speaking to the school principal’s role in council elections, the above-cited “School Council Election Fact Sheet—May 2001” states: “Other than conducting the election for the minority teacher and parent members in the event the school is required to do that, principals are not given a role by statute in school council elections. Principals can assist the teachers or parents if requested to do so with logistics such as opening the building, providing space in the building, and assisting PTA or PTO and teachers with communicating election meeting times and dates. Principals should not be involved in setting or monitoring election procedures, nominations, balloting, or counting votes. The principal is the custodian of records for the school, and must keep the official records from the parent and teacher elections for at least three years.”

**Options**

---

The following are options for consideration for further legislative action:

**Option 1**

The language of KRS 160.345(2)(b)(1) could be revised to read:

*The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. **The teachers of the school shall elect teacher members in an election conducted by the teachers of the school. School and district administrators shall play no role in teacher elections for school council positions other than, upon the request of teachers, to assist with logistics of the election.** A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal or head teacher shall be the chair of the school council.*

**Rationale**

This option clarifies that the teachers of the school, like the parents, are responsible for all the aspects of the teacher election. Further, it clarifies that the administration of the school has no role in the teacher election process.

**Option 2**

The language of KRS 160.345(2)(b)(1) could be revised to read:

*The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. **The teachers of the school shall elect teacher members in an election conducted by the teachers of the school. School and district administrators shall play no role in teacher elections for school council positions other than, upon the request of teachers, to assist with logistics of the election. The teachers of the school shall hold an organizational meeting prior to each election of council members to adopt a plan for the conduct of the election.** A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal or head teacher shall be the chair of the school council.*

**Rationale**

This language not only clarifies that the teachers of the school are responsible for all aspects of the teacher election and that the administration of the school has no role in the election process, it also affirmatively places the duty on the teachers in the school to develop a plan for the conduct of the teacher election. By placing language in the statute requiring teachers to adopt a plan for the conduct of the meeting, many of the problems that arise regarding teacher elections could be avoided.



**Issue: Should the General Assembly consider revising KRS 160.345(9)(a) pertaining to violations of the school-based decision making process?**

---

**Background**

---

Currently, KRS 160.345(9)(a) states:

*No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.*

OEA's responsibility to investigate and resolve issues related to the school-based decision making initiative is codified at KRS 160.345(9)(b), which states:

*An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.*

In implementing these sections, the application of the statutory language relating to an intentional pattern of practice has been problematic. Regardless of whether a complaint filed with OEA is related to the first alleged violation under KRS 160.345(9)(a) or whether it is a complaint related to a second or subsequent alleged violation, OEA staff must investigate and make a determination whether indeed there is sufficient information to indicate a violation may have occurred. This is necessary because, in order to establish a pattern of practice under the current statutory language, a first instance of violation of the statutory provisions must be established. OEA's interpretation of the term "pattern of practice" agrees with that of KDE—this language requires multiple violations in order to establish a pattern. In situations where violations may be separated in time by a number of years, it is also difficult to determine whether a pattern exists. Moreover, a series of separate violations within one sequence (e.g., when a principal is alleged to have hired three teachers within a short timeframe without consulting the school council as required by statute) could conceivably constitute a pattern. In effect, this language allows a person to intentionally violate the school-based decision making statutory provisions once with impunity.

In order to establish any violation of the current statutory language, adequate proof must be developed that the individual "intentionally" violated the statutory provisions. The term "intentionally" suggests a legal interpretation related to the mental state of the alleged violator. Establishment of the mental state of an alleged violator regarding intent pertaining to provisions of the school-based decision making process can be difficult. Failure to establish this mental state could possibly lead to a situation where a person

**Kentucky General Assembly**  
**Office of Education Accountability**

---

who has violated the provisions could mount a successful defense that he/she did not know that the acts constituted a violation, and thus, the acts could not have been an intentional violation. Or, the alleged violator could claim that the violation of the school-based decision making provisions was not intentional, even though the actions taken were intentional. The current statutory language could possibly lead to a dismissal of charges against a violator of the statutory provisions even though a pattern of practice could be established. Such a result would seem antithetical to the intention of the framers of KRS 160.345.

---

**Options**

---

The following are options for consideration for further legislative action:

**Option 1**

The General Assembly could rewrite the language of KRS 160.345(9)(a) to read:

*"No board member, superintendent of schools, district employee, or member of a school council shall **intentionally** engage in a **pattern of practice significant act** which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section."*

**Rationale**

This option addresses both issues related to violations of the school-based decision making statutory scheme. First, removal of the word "intentionally" from the statute alleviates the problem of proof associated with allegations that individuals have intentionally violated the statutory provisions. Because all members of school councils, including the principal (who normally serves as the chair of the council), receive mandatory training in the school-based decision making process, it seems unnecessary to require that a violation that circumvents KRS 160.345 be intentional. As far as superintendents are concerned, they too receive training in the school-based decision making process and the requirement that a violation be intentional also seems unnecessary. Further, district employees are subject to supervision either by the school principal or the superintendent; therefore, they should also either be trained in or understand the school-based decision making process to the extent that they could not plead ignorance when confronted with violations.

Second, eliminating the language related to a "pattern of practice" ensures that individuals who violate the statutory provisions in a significant manner even once are subject to timely disciplinary measures. It is not the intent of the OEA to seek severe sanctions for individuals who violate the school-based decision making statutory scheme once, unless such violation is wanton or extreme. Only the Kentucky Board of Education

**Kentucky General Assembly**  
**Office of Education Accountability**

---

can levy sanctions; thus, an additional level of protection is built into the system to protect against unwarranted sanctions for first violations.

**Option 2**

The General Assembly could rewrite the language of KRS 160.345(9)(a) to read:

*"No board member, superintendent of schools, district employee, or member of a school council shall **intentionally** engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section."*

**Rationale**

This option only removes the word "intentionally" from the language while leaving in effect the requirement that the individual engage in a pattern of practice (i.e., more than one occurrence). While this option is a refinement of the current language and would help with OEA's efforts to ensure that the school-based decision making statutory provisions are followed, it still allows individuals to engage in a practice that violates the statutory provisions one time with impunity.

**Issue: Should the General Assembly consider making changes to KRS 160.380(2)(b) and (c) pertaining to filling certified vacancies?**

---

### Background

---

KRS 160.380(2)(b) and (c) state:

*(b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.*

*(c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.*

The problem associated with the posting and waiver provisions of KRS 160.380(2)(b) and (c) is a longstanding one. Each year when the close of school approaches and the “hiring season” begins, OEA receives numerous complaints related to hiring certified personnel. Often these complaints allege that the proper posting procedures required in KRS 160.380(2)(b) and (c) have not been followed. While most cases result in a finding that proper procedures have been followed (in many instances a waiver of the posting requirement has been attained), staff from OEA must investigate each complaint. This consumes a great deal of staff time that could be better spent otherwise.

As an illustration of this problem, between May 1, 2001, and September 15, 2002, OEA received 21 complaints alleging violations of the posting requirements found in KRS 160.380(2)(b). In 4 cases a posting waiver was received under KRS 160.380(2)(c), thus no violations of statutory provisions were found. However, in 3 cases (of the remaining 17 complaints) a violation was found to have occurred related to the posting provisions of KRS 160.380(2)(b). Two cases pertaining to posting issues remain open. No violations of the posting provisions were found in 12 cases.

In a recent case a local superintendent applied for and received a waiver to hire a retired teacher to fill a certified vacancy. Statutory changes enacted in the 2002 Regular Session of the General Assembly mandate that the superintendent verify to the Kentucky Teacher Retirement system that no certified applicants were available prior to hiring a retired teacher to fill a certified vacancy. Although a certified applicant was available, the superintendent in this case obtained a posting waiver from the Kentucky Department of Education five days after the initial posting of the position, and he subsequently hired a retired teacher. The waiver in this case was granted based on information provided by the superintendent who did not indicate that a retired teacher was to be hired.

**Kentucky General Assembly**  
**Office of Education Accountability**

---

In another case the local superintendent hired a teacher in violation of KRS 160.380(2)(b) by completing the hiring process upon request of the principal of the local high school. In fact what happened was an aberration in which the principal of the school had taken an application from the potential teacher, consulted with the local school council, and then notified the superintendent in writing that he would like to hire the teacher and asked the superintendent to then post the vacancy. Rather than posting for the statutorily required period or requesting a waiver, the superintendent merely completed the hiring process and employed the teacher.

Many of the issues raised with this office concerning whether posting requirements have been met by the superintendent revolve around the definition of the term "vacancy" and the process for transfers of certified personnel found in KRS 160.345(2)(h), KRS 160.380, and KRS 161.760(2) and (4). The Attorney General in OAG 97-7 issued an opinion that a vacancy occurs anytime during the school year, not just after July 15 in the school year. In doing so the Attorney General rejected language in OAG 91-149 in which the definition of vacancy had been read to mean after July 15 of the school year. Thus under OAG 91-149, a vacancy only occurred in that period after July 15, and the superintendent had an open window to make transfers between July 1 of each year and July 15. The window for transfers is in actuality longer than 15 days because superintendents often know which teachers will be retiring or leaving the district long before July 1. When this is the case, superintendents frequently avail themselves of the transfer option to fill vacancies even though, in reality, teachers retiring or leaving the district are on contract through June 30. Thus, transfers may occur outside the hypothetical transfer window and in violation of KRS 160.380(2)(b).

The Kentucky Department of Education (KDE) has steadfastly chosen not to adopt the definition found in OAG 97-7. After several discussions between this office and staff members of KDE, KDE requested that the Attorney General review OAG 97-7. To date no opinion has been issued by the Attorney General on this matter.

Transfers create a unique situation in school districts. It is possible that time constraints would make it desirable to be able to move personnel without having the requirements for posting impinge upon those moves. Consider the following illustration:

On June 1, Teacher A resigns her position. Thus, a vacancy has been created by the resignation. The principal of the school has the authority to make internal transfers, and on June 10, she transfers Teacher B, a teacher in the school to fill the position left open by Teacher A's resignation. On June 12, Teacher C, also a teacher in the school, requests to be transferred to the opening created by Teacher B's transfer. The principal agrees and transfers Teacher C to the opening. Consequently, only one vacancy exists, the position left open by Teacher C's transfer. The principal, after discussion with the school council, then requests the superintendent to post the vacancy to fill Teacher C's position.

**Kentucky General Assembly**  
**Office of Education Accountability**

---

Under the current statutory scheme, the vacancy above would have to be posted for 30 days, or the district would have to request a waiver of the posting requirement. However, accepting the KDE position related to the “window” for transfers not internal to the school, the superintendent would have the authority to transfer a teacher from another school without involving the school council or the principal in the consultation process required by KRS 160.345(2)(h).

Certified applicants who are seeking positions expect the opportunity to file an application to be considered. In addition, the school principal, in consultation with the local school council, has a right to determine who will be hired for a vacancy in the school. Therefore, based upon the experience of OEA staff, it would seem advisable for some consideration to be given to shortening the required posting period and allowing school councils through their principal to function as the statutes have provided.

Staff in this office have had several discussions with personnel at KDE and with other interested parties, and all are in agreement that a shortening of the required posting period coupled with an elimination of the possibility of waiver of the posting period would be an acceptable resolution to the problem.

---

**Options**

---

The following are options for consideration for further legislative action:

**Option 1**

The General Assembly could change the language of KRS 160.380(2)(b) to read:

*When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer ~~thirty (30)~~ **fifteen (15)** days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.*

In addition, the General Assembly could strike the language KRS 160.380(2)(c), eliminating the possibility of waiver for the posting period.

**Rationale**

By changing the posting period from 30 to 15 days, interested applicants would still have the opportunity to apply for certified openings. In addition, the principal and the school council where the vacancy exists would have ample time to conduct interviews and to function as both KRS 160.345 and OAG 97-7 intend. Elimination of the waiver procedure would not seriously impinge on the ability of schools to operate when a vacancy occurs between July 1 and July 15 of each year (the hypothetical transfer window). For instance, if a vacancy were to occur on July 14, the position could still be filled by July 29 under this option. This would not extend the time during which an

**Kentucky General Assembly**  
**Office of Education Accountability**

---

opening would exist into the actual school year, and the statutory division of powers would still be in effect.

This option would work to effectively negate the transfer window by requiring that every vacancy be posted for at least fifteen days.

**Option 2**

The General Assembly could change the language of KRS 160.380(2)(b) to read:

*When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer ~~thirty (30)~~ **fifteen (15)** days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.*

In addition, the General Assembly could change the language of KRS 160.380(2)(c) to read:

*When a vacancy needs to be filled in less than ~~thirty (30)~~ **fifteen (15)** days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. **Such waiver may only be requested within the time period between July 1 and July 15 of each year. The superintendent, when requesting a waiver, must assure the Commissioner that consultation with the school council as required by KRS 160.345(2)(h) has occurred.** If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.*

**Rationale**

While addressing the issue of the length of posting, this option would still preserve the ability of school districts to employ personnel during that period of time leading up to the beginning of the school year on an expedited basis. This would only be workable to address the problems identified above, however, if the hypothetical transfer window ceased to exist. In effect, any time an opening occurred within a district, the superintendent would be required to post the opening prior to requesting a waiver. Transfers would not be permitted to fill vacancies until the posting was complete or a waiver had been received from the Commissioner. In addition, the necessary consultation process identified in KRS 160.345(2)(h) must still occur.

**Issue: Should the General Assembly consider revising KRS 159.080, 159.130, and 159.140 pertaining to Directors of Pupil Personnel?**

---

### **Background**

---

The position of Director of Pupil Personnel (DPP) has uncommonly comprehensive statutes that set forth all of the duties and powers of the office. See KRS 159.080, 159.130, and 159.140.

#### **159.080 Director of pupil personnel.**

- (1) Each superintendent of a local school district shall appoint a director of pupil personnel and assistants as are deemed necessary. Salaries of directors and assistants shall be fixed by the board of education.*
- (2) Directors of pupil personnel and assistants shall have the general qualifications of teachers and, in addition, shall hold a valid certificate issued in accordance with the administrative regulations of the Education Professional Standards Board. Certificates valid on January 1, 1956, for attendance officer shall hereafter be valid for the positions of director of pupil personnel. Certificates shall be reissued or renewed in accordance with the terms of the administrative regulations of the Education Professional Standards Board in effect at the time of application for reissuance or renewal.*
- (3) Directors of pupil personnel and assistants shall be allowed their necessary and authorized expenses incurred in the performance of their duties. Each board shall bear the expense of its directors of pupil personnel and assistants incurred in its district.*
- (4) The office of the superintendent of schools shall be the office of the director of pupil personnel and suitable space shall be provided therein or adjacent thereto for him.*

#### **159.130 Powers of directors of pupil personnel.**

*The director of pupil personnel and his assistants shall be vested with the powers of peace officers, provided, however, that they shall not have the authority to serve warrants. They may investigate in their district any case of nonattendance at school of any child of compulsory school age or suspected of being of that age. They may take such action in accordance with law as the superintendent directs. They may under the direction of the superintendent of schools and the board of education or the Kentucky Board of Education, institute proceedings against any person violating any provisions of the laws relating to compulsory attendance and the employment of children. They may enter all places where children are employed and do whatever is necessary to enforce the laws relating to compulsory attendance and employment of children of compulsory school age. No person shall refuse to permit or in any way interfere with the entrance therein of a director of pupil personnel or in any way interfere with any investigation therein.*



**Kentucky General Assembly**  
**Office of Education Accountability**

---

**159.140 Duties of director of pupil personnel.**

*The director of pupil personnel shall:*

- (1) Devote his entire time to the duties of his office;*
- (2) Enforce the compulsory attendance and census laws in the attendance district he serves;*
- (3) Acquaint the school with the home conditions of the student, and the home with the work and advantages of the school;*
- (4) Ascertain the causes of irregular attendance and truancy, and seek the elimination of these causes;*
- (5) Secure the enrollment in school of all students who should be enrolled and keep all enrolled students in reasonably regular attendance;*
- (6) Visit the homes of students who are absent from school or who are reported to be in need of books, clothing, or parental care;*
- (7) Provide for the interviewing of students and the parents of those students who quit school to determine the reasons for the decision. The interviews shall be conducted in a location that is nonthreatening for the students and parents and according to procedures and interview questions established by an administrative regulation promulgated by the Kentucky Board of Education. The questions shall be designed to provide data that can be used for local district and statewide research and decision-making. Data shall be reported annually to the local board of education and the Department of Education.*
- (8) Report to the superintendent of schools in the district in which the student resides the number and cost of books and school supplies needed by any student whose parent, guardian, or custodian does not have sufficient income to furnish the child with the necessary books and school supplies;*
- (9) Keep the records and make the reports that are required by law, by regulation of the Kentucky Board of Education, and by the superintendent and board of education.*

Two critical and frequently violated portions of KRS 159.080 and 159.140 specify the office location and limit on duties of the DPP position. Unique to the office of DPP is the requirement under KRS 159.080(4) that the office shall be located in the office of superintendent. In addition, KRS 159.140(1) requires that the DPP dedicate his or her entire time and attention to the duties of the office.

Unlike any other district office position, the DPP, a fully certified position, can only perform those duties, regardless of the size of the district or the demands of the position. Further, the DPP must have an office in the main office, regardless of the area that the DPP generally must travel.

The position of DPP is a holdover from the days of the truant officer. When the position became a funded position through local districts under the old unit allocation process, the position did not always receive a full unit allocation; therefore, additional duties were added to the position so that the person hired to be DPP could be a full-time employee. Thus, some analyses related to this position indicate that a DPP could be less than a full-time employee, but under the current statutory language must devote 100 percent of his

**Kentucky General Assembly**  
**Office of Education Accountability**

---

time to this position and no other position within the district. That is to say that a DPP could be 1/2 time, but this 1/2 time must be the only position held by be DPP.

A recent review of the Kentucky School Directory supports prior findings by this office that there is widespread violation of KRS 159.140. Of the 176 school districts in Kentucky, 108 districts listed additional duties for the person designated as the DPP. In a few instances, districts list no person as DPP yet have a person responsible for "student services." Many districts combine this position (DPP) with many additional duties other than DPP.

Review of those districts that listed additional duties for the DPP indicate that there are a few positions that are generally assigned. Duties that many DPPs are also responsible for include:

1. Title I/Federal Programs
2. Director of Transportation
3. Technology Coordinator
4. Student Health Coordinator
5. School Student Services Director

There are two critical considerations related to allowing additional duties to be added to the position of Director of Pupil Personnel. First, there are duties within a school district that would be compatible with the office of DPP. For example, it would be sensible to have the DPP work closely with Family Resource Centers and Youth Service Centers, perhaps serving as the district coordinator for them. The position of District Safety Coordinator could also logically be coordinated with the office of DPP. Second, however, effective discharge of the duties of the office of DPP requires a great deal of time. An effective DPP could easily be self-supporting in terms of funding merely by preventing students from dropping out of school and ensuring regular student attendance, which would increase ADA funding.

---

**Options**

---

The following are options for consideration for further legislative action:

**Option 1**

The General Assembly could revise the statutes related to the position of Director of Pupil Personnel so that districts could choose to coordinate this position with other positions in the district. In addition, the General Assembly could direct the Kentucky Department of Education to define small school districts, and only those districts would be eligible to coordinate the position of DPP with other duties.

**Rationale**

This option will allow districts, particularly smaller districts that have greater problems related to adequate central office staff, to maximize central office staff positions and at the same time preserve the functioning of the office of DPP.

**Option 2**

The General Assembly could revise the statutes related to the position of Director of Pupil Personnel to allow districts to choose to coordinate this position with other positions in the district only upon application to and approval of the Kentucky Department of Education. In order to gain approval from KDE, the district would be required to meet dropout criteria and student attendance criteria established by the General Assembly. In addition, an application for exemption from the statutory requirements would have to specifically list other duties to be joined with the office of DPP.

**Rationale**

This option accomplishes much the same as Option 1 above; however, it places the duty of approval for coordination of the position of DPP upon the Kentucky Department of Education. This approval process would ensure that smaller school districts that would benefit from such a combination of administrative duties would have oversight of their decisions.

**Issue: Should the General Assembly consider revising KRS 160.500 pertaining to the cost of collecting school taxes?**

**Background**

In a period of tight budgets it is important for school districts to control all costs, including the costs associated with the collection of school taxes and to maximize all sources of revenue. This issue speaks to both concerns.

The data below, developed by OEA staff, indicate the percentages of tax receipts paid by school districts to tax collectors in the state, the amount paid, and the difference between the amount paid and the minimum percentage set by statute. It is noteworthy that the tax collector's commission rises as the taxes collected rise. Nearly half of the county school districts in the state paid the maximum allowable fee in 2001-02, resulting in a payment of approximately \$4.1 million in excess of the minimum fee. Thirteen percent of independent districts in the state paid the maximum allowable fee in 2001-02, resulting in a payment of approximately \$495,000 in excess of the minimum fee.

**Percentages Paid for Tax Collection—All Districts**

<b>% Fee</b>	<b># of Districts 1997-98 &amp; 1998-99</b>	<b>% of Districts</b>	<b># of Districts 1999-00 &amp; 2000-01</b>	<b>% of Districts</b>	<b># of Districts 2001-02</b>	<b>% of Districts</b>
<b>4%</b>	61	35%	63	36%	62	35%
<b>3%-3.99%</b>	38	22%	36	20%	38	22%
<b>2%-2.99%</b>	38	22%	39	22%	41	23%
<b>1%-1.99%</b>	24	14%	23	13%	20	11%
<b>Collect Own Taxes</b>	11	6%	11	6%	11	6%
<b>Variable Fee</b>	2	1%	2	1%	2	1%
<b>Flat Fee</b>	2	1%	2	1%	2	1%
<b>Total</b>	176	100%	176	100%	176	100%

**Kentucky General Assembly**  
**Office of Education Accountability**

**Percentages Paid for Tax Collection—County Districts**

<b>% Fee</b>	<b># of Districts 1997-98 &amp; 1998-99</b>	<b>% of Districts</b>	<b># of Districts 1999-00 &amp; 2000-01</b>	<b>% of Districts</b>	<b># of Districts 2001-02</b>	<b>% of Districts</b>
4%	55	46%	56	47%	55	46%
3%-3.99%	30	25%	29	24%	31	26%
2%-2.99%	20	17%	20	17%	20	17%
1%-1.99%	14	12%	14	12%	13	11%
<b>Collect Own Taxes</b>	0	0%	0	0%	0	0%
<b>Variable Fee</b>	1	1%	1	1%	1	1%
<b>Flat Fee</b>	0	0%	0	0%	0	0%
<b>Total</b>	120	100%	120	100%	120	100%

**Percentages Paid for Tax Collection—Independent Districts**

<b>% Fee</b>	<b># of Districts 1997-98 &amp; 1998-99</b>	<b>% of Districts</b>	<b># of Districts 1999-00 &amp; 2000-01</b>	<b>% of Districts</b>	<b># of Districts 2001-02</b>	<b>% of Districts</b>
4%	6	11%	7	13%	7	13%
3%-3.99%	8	14%	7	13%	7	13%
2%-2.99%	18	32%	19	34%	21	38%
1%-1.99%	10	18%	9	16%	7	13%
<b>Collect Own Taxes</b>	11	20%	11	20%	11	20%
<b>Variable Fee</b>	1	2%	1	2%	1	2%
<b>Flat Fee</b>	2	4%	2	4%	4	1%
<b>Total</b>	56	100%	56	100%	56	100%

**Kentucky General Assembly**  
**Office of Education Accountability**

**Actual Commission vs. Minimum Commission<sup>1</sup>**

	<b>ACTUAL COMMISSION</b>	<b>COMMISSION @ 1.5%</b>	<b>DIFFERENCE</b>
<b>1999-2000</b>			
<b>County Districts</b>	\$12,514,240	\$8,942,499	\$3,571,742
<b>Independent Districts</b>	\$1,421,081	\$983,090	\$437,992
<b>Total</b>	\$13,935,322	\$9,925,588	\$4,009,733
<b>2000-2001</b>			
<b>County Districts</b>	\$13,428,815	\$9,625,620	\$3,803,195
<b>Independent Districts</b>	\$1,501,145	\$1,040,397	\$460,748
<b>Total</b>	\$14,929,960	\$10,666,017	\$4,263,943
<b>2001-2002</b>			
<b>County Districts</b>	\$14,471,823	\$10,371,057	\$4,100,766
<b>Independent Districts</b>	\$1,597,969	\$1,103,307	\$494,661
<b>Total</b>	\$16,069,792	\$11,474,364	\$4,595,427

School districts in this state saw their fees for tax collection rise from approximately \$13.9 million in 1999-2000 to \$16 million in 2001-2001, a net increase of \$2.1 million. What is peculiar with this rise in fees is that there were not necessarily increases in the cost of collecting these taxes. In essence, when the tax assessments for a school district rise, and the tax collections naturally rise as well, the tax collector (in most instances the sheriff) gets a windfall increase in fees without an accompanying documented increase in the costs associated with collecting school taxes. Moreover, if all districts had paid the minimum 1.5% fee for tax collection in 2001-2002, the net savings would have been approximately \$4.6 million.

KRS 160.500(1) and (2) provide:

***160.500 Collector of school taxes -- Allowances to -- Special collector -- Tax bills.***

*(1) School taxes shall be collected by the sheriff for county school districts and by the regular tax collector of the city or special tax collector for the independent school districts at the same time and in the same manner as other local taxes are collected, except as provided in this section and in KRS 160.510. The bond of the regular or special tax collector shall be made to cover his duties as the tax collector of the school district or districts for which he collects taxes. The tax collector shall be entitled to a fee equal to his expense but not less than one and one-half percent (1.5%) and not to exceed the rate of four percent (4%) for the collection of school taxes, which fee may be charged only for collecting or receiving school taxes or school funds received from the local school levy. No allowance shall be made for the collection of school taxes to any collecting officer who continues to collect taxes after his term that would not be allowed him had he collected the taxes during his term.*

*(2) An independent school district may select a special tax collector to collect its school taxes, and in the event such independent school district does so select a special tax*

<sup>1</sup> Based on estimated tax receipts multiplied by real estate rate, assuming 95% collection rate. The estimated tax receipts were then multiplied by the actual sheriff's commission.

**Kentucky General Assembly**  
**Office of Education Accountability**

---

*collector, a majority of the members of the independent school district board of education shall fix a fee for such special tax collector at a rate of not less than one and one-half percent (1.5%) and not more than four percent (4%) of the school taxes or school funds collected by such special tax collector from the local school levy in such independent school district. The special tax collector shall be required to execute bond in the same manner as provided in KRS 160.560 for the execution of a treasurer's bond, and the penal sum of the bond shall not be less than the aggregate of the tax bills that come into the hands of the special tax collector.*

The history of KRS is 160.500 shows that the issue of the fee paid for collection of school taxes has been considered on a number of occasions by the General Assembly. In 1894, the law required that school districts in the state appoint a treasurer to collect school taxes. In 1920, the General assembly made it the duty of the sheriff to collect the school tax and set the fee for collecting the tax at one percent. In 1942, KRS 160.500(1) was enacted, and it provided that the sheriff would collect school taxes, stating that the sheriff's fee could not exceed one percent. KRS 160.500(1) was amended again in 1946, setting the sheriff's fee for school tax collection at four percent. But in *Dixon v. Jefferson County Board of Education*, 225 S.W.2d 672 (1950), the Kentucky Court of Appeals (then the highest court in the state), interpreting the 1946 revision of KRS 160.500(1), held that, where the evidence showed that a four percent fee was in excess of the actual costs of collection, the excess amount was an unconstitutional diversion of school funds regardless of express statutory language allowing the sheriff a fee at the rate of four percent for the collection of school taxes. The statute remained intact until 1976 when the General Assembly again amended KRS 160.500(1) to read in pertinent part: "The tax collector shall be entitled to a fee equal to his expense but not to exceed the rate of four percent for the collection of school taxes...." The General Assembly once again addressed the sheriff's fee for the collection of school taxes in 1984, amending KRS 160.500(1) to read in pertinent part: "The tax collector shall be entitled to a fee equal to his expense but not less than one and one-half percent (1.5%) and not to exceed the rate of four percent (4%) for the collection school taxes...." This is the language in force today.

The Kentucky Supreme Court "has jealously guarded school funds from diversion, even for laudable purposes." *Board of Education of Madison County v. Wagers*, 239 S.W.2d 48 (Ky.1951) at 49. "The school fund cannot be compelled to finance law enforcement functions of the sheriff's office." *Board of Education of Lawrence County v. Workman*, 256 S.W.2d 528 (Ky.1953) at 531. Thus, "the school fund is chargeable only with the reasonable expenses actually incurred in collecting the school tax." *Id.* Where the fee paid the sheriff is for "some purpose other than paying the reasonable cost of collection, it is unconstitutionally diverted from a school purpose." OAG 78-146 at 2.

The chart of costs presented by the sheriff for the collection of school taxes should reflect actual salaries and expenses incurred in this process. OAG 77-98 at 1. In *Workman* the Kentucky Supreme Court adopted the following formula for developing the sheriff's chart of costs:

**Kentucky General Assembly**  
**Office of Education Accountability**

---

1. Determine the percentage of time the sheriff and his deputies devoted to all tax collection work;
2. Next, multiply the total salaries of the sheriff and his deputies by this percentage;
3. Next, determine the ratio of school taxes to total tax collections;
4. Multiply the figure obtained in # 2 by the ratio derived in # 3 to determine the amount of personnel costs allocable to school tax collections.

The same procedure is used for costs other than personnel. The other costs that appear to be allowable include (1) postage, (2) rental charges for office space, (3) utility charges, (4) office supplies, (5) travel costs, and (6) computer charges. These appear to be allowable "except where the costs clearly were attributable to a specific activity" other than tax collection. *Workman* at 530. In *Board of Education of Calloway County School District v. Williams*, 930 S.W.2d 399 (Ky.1996) the Supreme Court recognized "that tax collection costs may differ from year to year. Costs may change because of external factors such as utility charges, postage, rental, paper costs, salaries, travel, telephone and utility bills, computer charges and printing..." *Id* at 401. Such costs in no way diminish the constitutional command that school taxes must be appropriated to the common schools and no other purpose. Ky.Const. § 184.". *Id*.

While the collection of school taxes constitutes only a part of the services provided by the sheriff, "such taxes must pay their fair share of the total expenses incurred in maintaining the office." *See Davie v. Board of Education of Hickman City Schools*, 249 S.W.2d 954 (Ky.1952) at 956. Thus, the determination of reasonable costs for the collection of school taxes is fact-specific." *See Board of Education of Grant County v. Ballard*, 249 S.W.2d 956 (Ky.1952) at 957.

The sheriff is required to keep accurate and complete records of expenses related to the collection of school taxes. OAG 84-369 at 1. The proper charges should be based upon a year's cost calculation, not on less than a year or more than a year. *Davie* at 955. According to the *Davie* court, if sheriffs would be more exact in the itemization of their expenses, perhaps unnecessary litigation could be avoided. *Id.* at 956.

"A heavy burden is cast upon the sheriff to keep accurate and complete records of his expenses incurred in the collection of school taxes." OAG 62-335 at 3. In OAG 62-335 the Attorney General provided an exemplary chart indicating what the sheriff should provide for tax commission computation purposes. The chart is as follows:



**Kentucky General Assembly**  
**Office of Education Accountability**

**COST OF COLLECTION OF ALL TAXES**

Annual Salaries	Salaries	% of Time Devoted to Collection of All Taxes	Cost
Sheriff	\$7200	75% of 9 mos. per year	\$4,050.00
1 <sup>st</sup> Deputy	\$4800	100% for 9 mos. per year	\$3600.00
2 <sup>nd</sup> Deputy	\$2400	100% for 9 mos. per year	\$1800.00
Clerk	\$1200	100% of time for entire year	\$1200.00
		Total	\$10,650.00
Office Expenses and Supplies Incurred in Collection of <u>All</u> Taxes			\$350.00
Total Cost of Collection of All Taxes			\$11,000
Amount of all taxes collected			\$400,000
% of all taxes collected represented by school taxes			50% (\$200,000 ÷ \$400,000)
Cost of collecting school taxes			\$5,500.00 (50% of \$11,000.00)
Percent allowed in this case			2.75% (\$5,500.00 ÷ \$200,000)

Whenever OEA has encountered districts that are paying the maximum fee for the collection of school taxes and questions have arisen regarding the issue, without exception districts have been unable to produce documentation from the tax collector (in most instances the sheriff) that would be considered adequate to make a determination as to the accuracy of the estimate of costs associated with tax collection. In several instances, OEA has corresponded directly with the sheriff when the issue has been raised. There have been occasions where the sheriff could provide no documentation. In others the documentation provided to the local district was skeletal at best. In one instance the sheriff accounted for 133% of his time as devoted to tax collection work in order to reach the maximum four percent figure for his tax collection fee.

**Kentucky General Assembly**  
**Office of Education Accountability**

---

In most cases reviewed by OEA the sheriff simply has not kept adequate records upon which to base an estimate of costs associated with the collection of taxes. In addition, there have been several instances where the sheriff has paid excess fees at the end of the fiscal year to the local fiscal court, but in no instance has OEA found a pro rata share of excess fees returned to the local school district at the end of the fiscal year.

The process of paying the sheriff a commission based on an equitable share of the total tax collection appears to be a historical relic from a long gone era when the sheriff and duly authorized deputies traveled the county, going to individual homes to collect taxes. As indicated in *Workman*, the sheriff often had to travel to remote sections of the county to collect taxes. It appears that the sheriff in this case had hired 10 "precinct" deputies and paid them on a percentage basis. These deputies were paid four percent of the total tax collections in their precinct regardless of whether they personally collected the taxes or the taxes were paid at the sheriff's office. *Workman* at 530-31.

It is worth noting that *Workman* was decided in 1953, long prior to revisions to KRS 160.500 (1) in 1976 and again in 1984. It is also worth noting that, as early as 1950, the courts in Kentucky held that regardless of any express statutory language setting a specific percentage for the fee related to tax collection, the tax collector could only collect a fee equal to expenses if those expenses were less than the statutory percentage.

The Kentucky Supreme Court last considered the issue of tax collection fees in 1996 in *Board of Education of Calloway County School District v. Williams*, 930 S.W.2d 399 (1996). In a 4-3 decision, the Court upheld the *Workman* approach, but it also made clear that the General Assembly could revise KRS 160.500 to clarify the percentage the tax collecting entity could receive. "It is clear that the Legislature has recognized that there is a valid concern in regard to the amount of collections and has authorized a limit on such collections. *If there is to be a change in that limit or the method of approaching the limit, then that change should better come from the General Assembly than from the courts.*" (Emphasis added). *Id.* at 403.

The dissent in the *Williams* case made a strong argument against using the approach approved in *Workman*. Justice King, writing for the dissent, joined by Chief Justice Stephens and Justice Stumbo, made several points for policy makers to consider regarding this issue. The dissent:

1. Contrasted the concept of "actual expenses" with "value of service provided," concluding that application of the *Workman* formula was based on the value of the service provided in contradiction to the express language of KRS 160.500(1) and §§ 180 and 184 of the Kentucky Constitution;
2. Pointed out that the 1976 statutory revision clearly set the fee at the actual expenses rather than at some equitable distribution based on the value of service provided;
3. Noted that there was no evidence that, as the value of taxes received increases, the costs of collecting the taxes also increase; and

4. Argued that because of the mandatory taxing provisions of KERA 1990, sheriffs received a "windfall" from the application of the *Workman* formula's value-based calculation. "Thus, by allowing the sheriff to utilize this formula, the Court has permitted the sheriff to become the beneficiary of a windfall of public funds meant for the school district. In enacting KRS 116.470 (12), the General Assembly's intent was not provide a bonanza for sheriffs throughout the Commonwealth but was to provide much-needed tax dollars for education." *Id.* at 404.

Some districts have already begun the process of attempting to reduce the fee paid the sheriff for the collection of school taxes. OEA is aware of efforts in at least three districts and is working with those districts to provide assistance. In one instance, the local district recouped over \$90,000 by lowering the fee paid the sheriff for tax collection. Whenever a district attempts to reduce the fee paid the sheriff for tax collection purposes, the atmosphere is always highly charged. Certainly political considerations are always evident, and pressure is often brought upon board members by the sheriff. In addition, the sheriff often points out the fact that deputies are serving in schools as resource officers and the sheriff's office provides services through its deputies on other occasions. This, however, does not change the fact that the fee charged for tax collection purposes must be based on the actual expenses incurred in collecting the taxes.

Superintendents around the state have expressed an interest in having a clarified and specific process in place so that they may work to reduce the costs of collecting school taxes. To accomplish such an outcome and to save school districts around the state money for the collection of school taxes, consideration could be given to amending KRS 160.500(1).

---

### **Options**

---

The following are options for consideration for further legislative action:

#### **Option 1**

The General Assembly could rewrite KRS 160.500, setting a specific percentage to be paid for property tax collection. In doing so, the General Assembly could state that it finds the specified statutory percentage to be a reasonable approximation of the costs associated with the collection of local school taxes.

#### **Rationale**

This option would negate current issues related to collecting school property taxes where districts pay a percentage to the collecting agency with little or no documentation, because the setting of a definite and specific percentage would eliminate the need for documentation.

#### **Option 2**

The General Assembly could rewrite KRS 160.500, setting a specific percentage to be paid for property tax collection, stating that it finds the statutory percentage to be a reasonable approximation of the costs associated with the collection of school taxes. In addition, the General Assembly could add language to KRS 160.500 providing that county school districts could choose to collect their own property taxes.

**Rationale**

This option would combine the elimination of the need for documentation by the tax collecting entity along with the option for a county school district to eliminate paying any commission for the collection of its property taxes. It is of note that independent school districts in this state already may collect their own property taxes under the provisions of KRS 160.500.

**Option 3**

The General Assembly could find that in order to implement the provisions of KRS 160.500 effectively an administrative regulation is needed, and it could require the Kentucky Board of Education to promulgate a regulation mandating a specific reporting format for property tax collecting entities who collect school district property taxes.

**Rationale**

This option would allow the General Assembly to ensure that the provisions of KRS 160.500 are being followed by tax collecting entities by requiring uniform reporting procedures. In addition, this option would alleviate much of the pressure now present on local boards of education that do not want to risk alienating the sheriff.

**Issue: Should the General Assembly enact statutory language assigning specific responsibility for monitoring the activities of educational cooperatives for statutory and regulatory compliance and establishing procedures for handling violations?**

### Background

There are nine educational cooperatives in Kentucky. Kentucky educational cooperatives are organized under the Interlocal Cooperation Act (KRS 65.210 et seq.), which empowers local school districts to join together to exercise those powers that any one district can exercise individually. There is, however, no clear line of authority or set of procedures for situations where resolution of issues cannot be reached. These nine educational cooperatives have a combined annual budget in excess of \$12 million generated from membership dues, service fees, and other sources of revenue. All of these funds are public monies either derived directly from school districts or through an agency relationship whereby cooperatives receive funds as fiscal agents or grant administrators. It is critical that proper oversight be given to both the handling of these public monies and the operation of cooperatives generally.

The nine Kentucky educational cooperatives are

<b>Cooperative</b>	<b>Location</b>
Badgett Regional Cooperative for Educational Enhancement (BRCEE)	Madisonville
Central Kentucky Education Cooperative (CKEC)	Lexington
Green River Regional Educational Cooperative (GRREC)	Bowling Green
Kentucky Educational Development Corporation (KEDC)	Ashland
Kentucky Valley Educational Cooperative (KVEC)	Hazard
Northern Kentucky Cooperative for Educational Services (NKCES)	Highland Heights
Ohio Valley Educational Cooperative (OVEC)	Shelbyville
Southeast/South Central Educational Cooperative (SE/SC)	Richmond
West Kentucky Educational Cooperative (WKEC)	Murray

Cooperatives exist for a number of purposes, but primary among these are the following:

1. To provide combined purchasing services for member districts;
2. To provide professional development opportunities for member districts;
3. To provide other education-related services, such as special education services, adult education services, migrant education services, and technology services, for member districts.

The Office of Education Accountability (OEA) has monitored and attempted to resolve issues related to problems associated with cooperatives' compliance with statutes and administrative regulations. OEA has uncovered several instances where statutes or administrative regulations have been violated during the recent past, and in many instances, a resolution to the situation has been found. There have been, however, other instances where resolution could not be reached.

**Kentucky General Assembly**  
**Office of Education Accountability**

---

Several instances serve to illustrate the problems associated with the operation of educational cooperatives in the state.

- There was a highly publicized incident related to fraud by a high-ranking Kentucky Department of Education official. This incident led to a conviction of the Department official with a prison term and restitution ordered.
- None of the nine cooperatives had complied with the provisions of the Interlocal Cooperation Act until OEA staff pointed out the non-compliance. None had obtained the requisite accession to membership in the cooperative from local boards, but instead operated on the signature of the superintendent of each member district. This, in essence, amounted to a usurpation of the authority of the local boards to expend funds by the superintendents who committed local district monies for dues to the respective cooperatives. In addition, none of the local districts had filed the interlocal agreement with the county clerk, as required by statute.
- There have been problems noted with bidding procedures where a cooperative operated outside the Model Procurement Code (KRS 45A.300 et seq.) when accepting and awarding bids on behalf of member districts. After several months of dealing with officials of the cooperative, OEA was able to convince the cooperative that the Model Procurement Code applied, and it has since clarified its procedures for bidding to comply.
- There have been several instances where local superintendents have committed local district funds for cooperative services or activities without an affirmative vote of the local board. These violations range from purchasing professional development services and other programs to agreements to participate in other cooperative programs.
- At least two cooperatives have purchased real property without following the proper approval process for local districts by the Kentucky Department of Education (KDE). These purchases were accomplished by the vote of the Board of Directors (i.e., the superintendents of the member districts) of the two cooperatives without approval by the member boards of education. This action by the superintendents was not only beyond the scope of their powers as agents of their local boards, but also in violation of the process for the purchase of real property that local districts must follow. Districts may not use the auspices of a cooperative to circumvent the statutory or regulatory mandates placed upon them. Since the cooperative is a joint venture of school boards, any property owned by the cooperative is owned by the member districts on a pro rata share, and thus, is governed by the real property procurement procedures binding on a local district.
- Another cooperative Executive Director has been accused of impropriety in the disposal of surplus property (automobiles identified to be traded in on other automobiles), and the cooperative Board of Directors, it is alleged, authorized the

**Kentucky General Assembly**  
**Office of Education Accountability**

---

disposal of the surplus property outside the mandates of the Model Procurement Code. This case is currently under investigation, but preliminary inquiries indicate that the Model Procurement Code has been violated. More disturbing, however, are allegations that the Executive Director failed to obtain adequate value for the automobiles traded in, that his son and his father-in-law purchased two automobiles traded in for extraordinarily low prices, and that the cooperative thus absorbed a loss on the traded in vehicles and supplemented the price of the vehicles purchased by the Executive Director's family with public funds.

- At one time two of the state's cooperatives held summer meetings out of state. Upon the insistence of OEA, both ceased this practice. However, in June of 2002 one of the cooperatives' Board of Directors voted to hold its 2003 summer meeting in Nashville. OEA then contacted the cooperative Executive Director to seek a response as to how this activity would not be in violation of the Open Meeting Law (KRS 61.820) and in light of 02-OMD-78 issued by the Office of the Attorney General. In that Open Meetings Decision, the Attorney General opined that where a public entity holds a meeting outside its jurisdictional boundaries, it has violated KRS 61.820. Further, the opinion states that public agencies (which educational cooperatives are because they are an amalgam of public agencies) with statewide authority may hold their meetings anywhere within the Commonwealth. A recent communication from the cooperative's Executive Director indicates that the Board of Directors will be asked to reconsider its vote to hold its 2003 summer meeting in Nashville, but no action has been taken to date.

There are no clear lines of authority for oversight and monitoring of educational cooperatives to ensure compliance with statutes and administrative regulations. OEA has taken steps to work with cooperatives to ensure compliance, but there have been occasions where its efforts have been thwarted, or cooperatives simply have refused to act.

Options

---

The following are options for consideration for further legislative action:

**Option 1**

Currently KRS 156.017 states in pertinent part: “*The regional service centers may include, but are not limited to, specially trained technical assistance teams and may facilitate the work of school district cooperatives or consortia.*” It is clear from this language that the General Assembly contemplated involvement of the regional service centers established with the passage of the Kentucky Education Reform Act of 1990 (KERA) with educational cooperatives in the state. However, the language does not make explicit the authority of the regional service centers to oversee the work of the cooperatives to ensure compliance with statutes and administrative regulations, nor does the language make the duty to do so explicit.

The General Assembly could revise the language of KRS 156.017 by inserting immediately after the passage above the following language:

**The Commissioner of Education shall direct each regional service center director to monitor the activities of any education cooperative with primary offices within the geographical boundaries of the regional service center to ensure that all cooperative actions comply with Kentucky statutes and administrative regulations that apply to member school districts. Whenever the regional service center director determines that an action of a cooperative does not comply with relevant Kentucky statutes or administrative regulations, he shall forward a report of the violation to the Commissioner. The Commissioner shall attempt to resolve the violation through consultation with the Executive Director and the Board of Directors of the cooperative found by the regional service center director to be in violation of a relevant Kentucky statute or administrative regulation. If the situation cannot be resolved to the satisfaction of the Commissioner, the matter shall be forwarded to the Kentucky Board of Education for a hearing to be conducted in accordance with KRS Chapter 13B. The Board, in its discretion, shall determine the proper resolution to the matter based solely upon the record from the hearing. Any determination by the Board may be appealed to the Franklin Circuit Court by the parties to the hearing.**

**Rationale**

This language clearly identifies the Commissioner of Education, through the director of each regional service center, as the person responsible for ensuring that the nine educational cooperatives in this state operate in compliance with all applicable statutes and administrative regulations. Further, this language clearly identifies the procedures for resolution of issues related to statutory and regulatory compliance by educational cooperatives.



**Kentucky General Assembly**  
**Office of Education Accountability**

---

This language also empowers the Kentucky Board of Education to take appropriate action upon a finding of a violation of applicable statutes or administrative regulations. This statutory language also places responsibility for routine monitoring of the actions taken by educational cooperatives with the regional service centers, which are geographically linked to the primary service areas of the various cooperatives.

**Option 2**

The General Assembly could revise KRS 7.410 by adding new statutory language to read:

**The Office of Education Accountability shall have the responsibility for monitoring the actions taken by all Kentucky educational cooperatives to ensure that such actions comply with all Kentucky statutes and administrative regulations that apply to member school districts. Upon a determination by the Office of Education Accountability that a violation of a Kentucky statute or administrative regulation has occurred, the matter shall be resolved or the matter shall be forwarded to the Kentucky Board of Education for a hearing to be conducted in accordance with KRS Chapter 13B. The Board, in its discretion, shall determine the proper resolution to the matter based solely upon the record from the hearing. Any determination by the Board may be appealed to the Franklin Circuit Court by the parties to the hearing.**

**Rationale**

This language clearly identifies the Office of Education Accountability, which has been monitoring the actions of educational cooperatives, as the entity responsible for ensuring that the nine educational cooperatives in this state operate in compliance with all applicable statutes and administrative regulations. Further, this language clearly identifies the procedures for resolution of issues related to statutory and regulatory compliance by educational cooperatives.

This language also empowers the Kentucky Board of Education to take appropriate action upon a finding of a violation of applicable statutes or administrative regulations. Moreover, this process mirrors the process found in KRS 160.345 for resolution of alleged violations of the school-based decision making process.