COMMONWEALTH OF KENTUCKY
SUPREME COURT
No. 2011-SC-000658

JEFFERSON COUNTY BOARD OF EDUCATION, et al. APPELLANTS

COURT OF APPEALS NO. 2010-CA-001830

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
CIVIL ACTION NO. 10-CI-004174
Division Ten, Hon. Irv Maze

CHRIS FELL, as father and next friend of L.F., et al. APPELLEES

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BRIEF ON BEHALF OF THE KENTUCKY SCHOOL BOARDS ASSOCIATION AND THE BOARD OF EDUCATION OF FAYETTE COUNTY AS AMICI CURIAE

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CERTIFICATE REQUIRED BY CR 76.12(6)

I hereby certify that a true and accurate copy of this Brief has been mailed, first-class, postage prepaid, to Hon. Samuel Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Hon. Irv Maze, Judge, Division Ten, Jefferson Circuit Court, 700 W. Jefferson Street, Louisville, KY 40202; Byron E. Leet, Esq., Lisa C. DeJaco, Atty., and Anne R. MacLean, Atty., WYATT, TARRANT & COMBS, 500 W. Jefferson Street, Louisville, KY 40202-2898; Teddy B. Gordon, Esq., 807 W. Market Street, Louisville, KY 40202; J. Bruce Miller, Esq., and Norma C. Miller, Atty., J. BRUCE MILLER LAW GROUP, Waterfront Plaza, 20th Floor, 325 W. Main Street, Louisville, KY 40202; and Sheila P. Hiestand, Atty., HUGHES & COLEMAN, Republic Plaza, 200 S. 7th St., Suite 110, Louisville, KY 40202, on this the 13th day of January, 2012.

Robert L. Chenoweth

STATEMENT OF POINTS AND AUTHORITIES

PURPOSE OF THE BRIEF AND PARTICULAR ISSUES ADDRESSED

The purpose of this brief is for the Kentucky School Boards Association (KSBA) and the Board of Education of Fayette County (FCBOE) to assist the Court in considering the appropriate meaning to be ascribed to KRS 159.070 following the 1990 amendment thereto. These Amici Curiae are KSBA, a voluntary membership organization which enjoys participation by 100% of the local public boards of education in Kentucky, and the FCBOE, the governing body of the Kentucky school district with the largest student population outside Jefferson County. These Amici Curiae urge a reading of the statute which affirms the discretion of local boards of education to develop attendance boundaries in the manner determined by them to be most appropriate. In support of this outcome, these Amici Curiae argue that both the plain meaning and the legislative history of KRS 159.070 require the reversal of the Court of Appeals Decision below. These Amici Curiae also argue that the interpretation of KRS 159.070 given below brings the statute in conflict with Kentucky Constitution, Section 183, as previously interpreted by this Court.

ARGUMENT

I. THE DECISION BELOW IS INCONSISTENT WITH THE RULES OF STATUTORY INTERPRETATION.

A. The Court of Appeals Majority Failed to Construe KRS 159.070 According to its Plain Meaning.

The task laid out in the matter *sub judice* is simply stated, even if it has not been simply executed below: identify the meaning of the final sentence of KRS 159.070. That sentence currently reads:

> "Within the appropriate school district attendance area, parents or legal guardians shall be permitted to enroll their children in the public school nearest their home."

The first rule of statutory construction is to construe a statute according to its plain meaning, unless that meaning leads to an absurd or wholly unreasonable result. *Johnson v. Branch Banking & Trust Co.*, 313 S.W.3d 557, 559 (Ky. 2010). In KRS 446.080(4), the General Assembly instructs "[a]ll words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning." The single word in KRS 159.070 which is the subject of the dispute in this litigation is "enroll."

"Enroll" is used with a specific meaning in Kentucky's compulsory attendance laws (KRS Chapter 159), and thus must be accorded this meaning in KRS 159.070. Statutes *in pari materia* or those which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose, must be construed together and the legislative intention apparent from the whole enactment must be carried into effect. *Milner v. Gibson*, 249 Ky. 594, 61 S.W.2d 273, 277 (1933); *also Beckham v. Bd. of Educ. of Jefferson Co.*, 873 S.W.2d 575, 577 (Ky. 1994). Throughout KRS Chapter 159, the word "enroll" is used to connote "register" and is not used as a synonym for "attend." In KRS 159.030, the General Assembly created exemptions from attendance in a regular public school. In four of those exemptions, the phrase "enrolled and in regular attendance" is used. *See* KRS 159.030(1)(b), (c), (e), and (f) (emphasis added). Similarly, in KRS 159.140(1)(e), one of the duties of the director of pupil personnel (DPP) is to "keep all enrolled students in reasonably regular attendance." That is, for compulsory attendance purposes, the General Assembly has declared that it is not sufficient for a child to merely enroll (register), but the child must also regularly attend school – enrolling and attending are legally distinct.

There is a dearth of statutory support for the conclusion that "enroll" is used to mean "attend" or that the General Assembly did not intend there to be a differentiation between the words "enroll" and "attend." The statutory evidence compels the conclusion the General Assembly uses the word "enroll" for the specific legal meaning it has acquired—distinct from "attend"—within the compulsory attendance provisions of KRS Chapter 159. Thus KRS 159.070 admits of only one plain reading in light of the established legal meaning of the word "enroll" in these education statutes: parents or legal guardians must be permitted to register their children in the public school nearest their home.

Taking this as the plain meaning of KRS 159.070, the second step of the analysis is to determine whether this meaning is "absurd" or "wholly unreasonable." *See Johnson, supra.* Due to the rural nature of much of Kentucky, and the distance between many communities and the seat of government, a statute granting the right for parents to register their children at the school facility nearest their home is neither absurd nor unreasonable, and it reinforces and facilitates compliance with compulsory school attendance. Finding this construction of the statute "untenable, the Court of Appeals majority but failed to heed the rule that courts "have no power to question the propriety, wisdom, or expediency of legislation." *Board of Trustees, Newport Public Library v. City of Newport*, 300 Ky. 125, 187 S.W.2d 806, 812 (1945); *also*, *King Drugs, Inc. v. Comm.*, 250 S.W.3d 643, 645 (Ky. 2008) (if a plain reading "yields a reasonable legislative intent, then that reading is decisive and must be given effect . . . regardless of our estimate of the statute's wisdom").

The Court of Appeals found that an interpretation of KRS 159.070 as granting a right of convenience to parents wishing to register their children in public school was

"untenable." Court of Appeals Decision, p. 17. This unsupported conclusion suggests a prohibition against enacting statutes which have as their primary or even sole purpose the elimination of a burden or the creation of a convenience. The declaration that a statute creating a right of convenience is "untenable" is the very sort of judgment regarding the propriety, wisdom, or expediency of legislation which courts are required to eschew.

B. The History of the Kentucky Education Reform Act Refutes the Interpretation of KRS 159.070 by the Court of Appeals.

Only if a statute is ambiguous or a plain reading is otherwise frustrated may courts resort to the canons of statutory construction. *See Stephenson v. Woodward*, 182 S.W.3d 162 (Ky. 2005). Notwithstanding that KRS 159.070 admits of a plain meaning which is neither ambiguous nor absurd or wholly unreasonable, it is submitted application of the rules of statutory construction refutes the conclusion reached by the Court of Appeals below and supports the decision of the Jefferson Circuit Court.

Prior to 1976, KRS 159.070 related solely to the ability of school districts to create unified attendance districts and established a process for resolving disputes under the statute. In 1976, the General Assembly added a final sentence to read: "Within the appropriate school district attendance area, parents or legal guardians shall be permitted to enroll for attendance their children in the public school nearest their home." The Kentucky Education Reform Act of 1990 (KERA) amendment to KRS 159.070 removed the words "for attendance" from the statute. In *Brown v. Sammons*, 743 S.W.2d 23 (Ky. 1988), this Court reiterated "whenever a statute is amended, courts must presume that the Legislature intended to effect a change in the law." (Citations omitted.) 743 S.W.2d at 24. Likewise, in *Inland Steel Co. v. Hall*, 245 S.W.2d 437 (Ky. 1952), the former Court of Appeals held "[w]here

a clause in an old enactment is omitted from the new one, it is to be inferred that the Legislature intended that the omitted clause should no longer be the law." Citing *Eversole v. Eversole*, 169 Ky. 793, 185 S.W. 487, 489 (1916), the *Inland Steel* Court held "[w]here a statute is amended or re-enacted in different language, it will not be presumed that the difference between the two statutes was due to oversight or inadvertence on the part of the Legislature. On the contrary, it will be presumed that the language was intentionally changed for the purpose of effecting a change in the law itself." 245 S.W.2d at 438.

The Court of Appeals majority held that the General Assembly in amending KRS 159.070 in 1990 as part of the complete overhaul of the education system in Kentucky was concerned solely with eliminating redundancy in what was at the time a four (4) sentence statute. Their construction ignores the legal presumption that elimination of the words "for attendance" was intended to effectuate a change in the law itself, especially since the statute was repealed, and amended to conform. The Court of Appeals majority identified nothing in the legislative history or elsewhere which rebutted this presumption beyond their own distaste for the outcome dictated by the presumption.

The meaning of KRS 159.070 accorded by the Court of Appeals majority below requires the assumption that "enroll" always also implies "attendance." The revision to KRS 159.070 was in Section 218 of Chapter 476 of the Acts of 1990. Just two (2) sections earlier, in Section 216 is found the revision to KRS 159.030. There, in four separate subsections, the General Assembly left intact the phrase "enrolled and in regular attendance in . . .." *See* KRS 159.030(1)(b), (c), (e), and (f) (1990). And two (2) sections later, in Section 220 is found the revision to KRS 159.140 in which the General Assembly left intact what must to the Court of Appeals majority seem an absurdly redundant requirement for

directors of pupil personnel: "[s]ecure the enrollment in school of all children who should be enrolled and keep all enrolled children in reasonably regular attendance." KRS 159.140(5) (1990). If "enrollment" implies "attendance," DPPs would need only to ensure the enrollment of students without a separate requirement regarding their attendance.

If the use of "enroll" in KRS 159.070 means "enroll and attend" as held by the Court of Appeals majority, then the General Assembly should have similarly revised the subsections of KRS 159.030 and the second half of KRS 159.140(5) (1990) to eliminate the "in regular attendance" modifier for "enrolled" in each of those sections. The choice to pare down the single occurrence of "enroll . . . for attendance" from one statute but leave intact the phrase "enrolled and in regular attendance" five times in two neighboring statute must be presumed to have been intentional, and the intent must have been to change the meaning of the statute from which "for attendance" was excised.

The history and context of the 1990 amendment to KRS 159.070 reinforce the interpretation that KRS 159.070 does not contain a right of attendance in the school nearest to the child's residence. As noted above, KRS 159.070 was revised in 1990 as part of the comprehensive overhaul of Kentucky's public education system in KERA. To elucidate the appropriate interpretation of KRS 159.070, some background is believed necessary. However, the relevant background is not the storied history of desegregation of public schools in Jefferson County, as was the primary focus of the Court of Appeals majority opinion below. Instead, the relevant background is the story of KERA. In 1989, this Court held in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 189 (Ky. 1989), that the statutory law in its entirety of the Commonwealth relating to public education was unconstitutional due to its failure to "provide an efficient system of common schools

throughout the state," as required by Kentucky Constitution, Section 183. This Court then declared "the result of our decision is that Kentucky's entire system of common schools is unconstitutional. * * * This decision applies to the statutes creating, implementing and financing the system and to all regulations, etc., pertaining thereto." 790 S.W.2d at 215. The General Assembly was given until the adjournment, *sine die*, of its regular session in 1990 to re-establish an education system that is constitutionally efficient. *Id.* at 216. KERA was the result of this effort, and was so declared by the General Assembly, which described House Bill 940 (1990) as "An act relating to the reform of the Commonwealth's system of common schools, raising revenues incidental thereto, and responding to the Supreme Court's mandate in *Rose v. Council for Better Education, Inc.*, and declaring an emergency."

KERA was divided into eight (8) parts, with the revision to KRS 159.070 being within Part IV of KERA, designated as "amendments to conform. " That is, KRS 159.070 was amended to conform with the substantive changes to school law which were created by KERA. There is no obligation on the Court or the parties to speculate the specific aspect or provision of KERA to which KRS 159.070 was amended to conform. It is sufficient to accept that the General Assembly deemed the revision to KRS 159.070 necessary to bring it in line with the overriding goal and purpose of KERA as a whole — an efficient system of public common schools. Being part of legislation which had the effect of abandoning the prior system of common schools and establishing a new system of common schools, it must be presumed the General Assembly acted intentionally in revising KRS 159.070, and that the revision served the purpose of abandoning an inefficient system of schools and creating an efficient one. Absent a clear indication KRS 159.070 was revised to serve some other purpose, or that its revision was incidental or mere "housekeeping," the

courts are not free to ignore the overall purpose declared by the General Assembly accompanying KERA to "reform . . . the Commonwealth's system of common schools" in response to this Court's mandate in *Rose*, *supra*, which declared the prior system unconstitutionally inefficient.

II. THE DECISION BELOW RENDERS KRS 159.070 UNCONSTITUTIONAL.

The Court of Appeals majority declares that it was not requested to determine the constitutionality of KRS 159.070 as revised in 1990, either as written or as applied to the Jefferson County Public Schools. Court of Appeals Decision, p. 15. However, it is the interpretation of KRS 159.070 given by the majority below which brings the statute in conflict with Section 183 of the Kentucky Constitution, and this Court should either reverse the Court of Appeals or declare the statute unconstitutional as interpreted by the Court of Appeals. The Court of Appeals appears to accept as a legal maxim that neighborhood schools are the most "efficient" form of school, and that only an interpretation of KRS 159.070 which mandates a right of attendance at a neighborhood school would make sense in an "efficient" system of schools. This conclusion also presumes without evidence that KRS 159.070 is interpreted in other school districts to create school attendance zones which are geographically drawn so that students attend the school closest to their residence. Court of Appeals Decision, p. 21 ("JCPS has submitted to this Court a 'doom and gloom' forecast if we bind it to the express law applicable to all other school districts in this Commonwealth.") A review, by example, of the elementary school attendance boundaries for amicus FCBOE (http://www.fcps.net/media/425268/elem%20areas.pdf – last accessed 01-10-12) demonstrates that attendance zones are not typically drawn to be geographically

centered on a school and school districts outside Jefferson County neither interpret nor apply KRS 159.070 to create a geographic test when drawing school attendance zones.

The Court of Appeals avoids analysis of the effect of its ruling on school districts state-wide which operate special schools or special programs within particular schools, such as programs or facilities for students who qualify for special education services or specialized health services, alternative schools and programs, and magnet schools and programs.

Many students qualify for special services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.*, and §504 of Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794.[1] For illustration, the population of students in Kentucky served under the IDEA in the 2010-11 school year was just over 100,000 out of approximately 675,000 total public school student enrollment.[2] These federal laws have been interpreted to create no right for students to be educated in the school closest to their home. *See, e.g., Barnett v. Fairfax County Sch. Bd.*, 927 F.2d 146 (4th Cir. 1991); *Timothy H. v. Cedar Rapids Comm. Sch. Dist.*, 178 F.3d 968 (8th Cir. 1999); *Urban by Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720 (10th Cir. 1996). The very impetus for KERA was the

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[1] The IDEA includes traditional categories of "special education" students: mental retardation, serious emotional disturbance, autism, traumatic brain injury and learning disabilities, as well as vision, speech, hearing, and mobility impairments. *See* 34 C.F.R. §300.8. Eligibility under Section 504 is even broader and can include asthma, allergies, diabetes, seizure disorders, and similar conditions requiring health or other services during the school day, as well as other conditions which are not sufficiently severe to qualify a student for services under the IDEA. *See* 34 C.F.R. §104.3.

[2] *See* http://www.education.ky.gov/NR/rdonlyres/D3F037D7-82F8-44E3-8168-0FA454C6B302/0/201011CountbyAge.pdf *and* http://www.education.ky.gov/NR/rdonlyres/1A213CF2-E6D0-47C0-9552-E3BF9941A989/0/SAAR11StateTotal.xls (last accessed 01-13-12).

mandate of this Court in *Rose* that the efficient system of schools should seek to eliminate waste and duplication. 790 S.W.2d at 213. The interpretation of KRS 159.070 given by the Court of Appeals as creating a right for students to attend the school nearest their home would require waste and duplication, as it would prevent school districts from consolidating specialized services in a single location and assigning eligible students to that location. This effect of the Court of Appeals Decision would have devastating financial effects across the Commonwealth. There is a nationally recognized shortage of teachers qualified to teach exceptional children in Kentucky. *See* "Teacher Shortage Areas Nationwide 1990-91 thru 2011-12," U.S. Department of Education (March 2011), p. 41 (http://www2.ed.gov/about/offices/list/ope/pol/tsa.pdf – last accessed 01-10-12) (identifying current shortages in numerous areas of exceptional children education).[3] Along with additional special education teachers, other specialists such as school nurses and sign language interpreters would also have to be hired at each school where a qualifying student is in attendance, as the discretion to consolidate these scarce resources would be negated by the erroneous reading of KRS 159.070 by the Court of Appeals.

If State law is read to create a right of neighborhood school attendance, then the latitude afforded under federal law for operation and management of programs under the IDEA and Section 504 would be negated in Kentucky to the certain detriment of the public fisc. Much needed but scarce funds for these special programs would be diluted by the mandated duplication of equipment, program space, and staff at each school where a qualifying student is in attendance. KRS 159.070 has not traditionally been identified as the

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[3] Also identified is the shortage of teachers of English as a Second Language, a program traditionally consolidated for this specialized instruction to avoid waste and duplication.

source of any restriction on the consolidation of specialized services to serve these students or on the discretion to assign students to particular schools for receipt of these services. However, the identification by the Court of Appeals majority of a right for students to attend the school nearest their home would negate the traditional method for operating and staffing these special programs. There is no legislative history for KRS 159.070 which would support an intent of the General Assembly to compel duplication of staffing, equipment, and program space for these specialized programs in each school with a single child in attendance who qualifies for services under federal law. Yet by having this effect, the Court of Appeals Decision brings KRS 159.070 in conflict with Kentucky Constitution, Section 183 and the stated purpose of KERA.

A similar conundrum will come into existence in relation to alternative school assignments. In many school districts, alternative school assignments are made unilaterally by schools either to provide supplemental academic services to students who have fallen behind or to provide temporary disciplinary placements which avoid complete expulsion from school. Traditionally, alternative school assignment has not been found to implicate federal due process concerns, as long as students continue to receive educational services. *See, e.g., Wayne v. Shadowen*, 15 Fed.Appx. 271 (6th Cir. 2001); *Buchanan v. City of Bolivar, Tenn.*, 99 F.3d 1352 (6th Cir. 1996). If there is read into KRS 159.070 a right to attend a particular school, then students will be entitled to due process before school districts across the Commonwealth may exercise their traditional discretion to assign students to particular alternative programs for academic or disciplinary purposes. *See, e.g., Goss v. Lopez*, 419 U.S. 565, 573 (1975) (interests entitled to due process protection under the

Fourteenth Amendment are not created by the Constitution, but are created by an independent source such as state statutes or rules).

In KRS 158.150, the General Assembly has identified the minimal procedural due process required before student is suspended or expelled from school. Had the General Assembly believed disciplinary assignments to alternative programs created entitlement to procedural due process, KRS 158.150 would include those procedures. There is no legislative history for KRS 159.070 which would support an intent of the General Assembly to invite federal due process scrutiny of disciplinary alternative school assignment and by having this effect, the Court of Appeals Decision brings KRS 159.070 in conflict with Kentucky Constitution, Section 183 and the stated purpose of KERA.

Finally, if the Court of Appeals Decision is affirmed, the ability of schools to utilize facilities or portions of facilities for magnet, technical, and other specialized programs very well could be negated. The Court of Appeals majority suggests that waivers can be sought for certain schools or programs, without suggesting the source of legal authority for such a request or who would be authorized to grant the waiver. Yet, absent a waiver, parents who wish to exercise this "discovered" right to attend their nearest school would have an effective veto over any decision to utilize that facility or any portion thereof for a specialized program for students who do not reside nearest that building. This would have the effect of relegating magnet or other specialized programs to those areas of a school district which have the lowest population in relation to available facilities, which very likely will result in inefficiency in transportation, staffing, and other specialized expenses attendant to operating these specialized programs, and may have the effect of discouraging parents from applying for admission to specialized programs because of the location. This negates the goal of

expanding the availability of diverse educational opportunities for students. There is nothing in the legislative history of KRS 159.070 which indicates an intent by the General Assembly to frustrate the creation of magnet or specialized programs and by having this effect, the Court of Appeals Decision brings KRS 159.070 in conflict with Kentucky Constitution, Section 183 and the stated purpose of KERA.

The conclusion reached by the Court of Appeals majority ignores, whether intentionally or unintentionally, this myriad of inefficiencies – duplication and waste – created by a "nearest school" right of attendance, not just in Jefferson County, but across the State. Requiring every special service or program to be provided in every building dilutes the ability of school districts to provide specialized services in the areas of disability, health, discipline, and academics and requires unnecessary duplication of expenditures. These inefficiencies bring KRS 159.070, as interpreted by the Court of Appeals, into direct conflict with Kentucky Constitution, Section 183 and this Court's mandate in *Rose*, *supra*.

III. THE COURT OF APPEALS MAJORITY DECISION BRINGS KRS 159.070 IN CONFLICT WITH TRADITIONAL GUIDANCE GIVEN TO SCHOOL DISTRICTS BY THE KENTUCKY DEPARTMENT OF EDUCATION.

In *Williams v. Ky. Dept. of Educ.*, 113 S.W.3d 145, 154 (Ky. 2003), this Court recognized that the Kentucky Department of Education (KDE) was created by the General Assembly "to act as its alter ego with respect to its constitutional responsibility to provide an efficient system of common schools." In fulfilling that role, KDE and the Kentucky Board of Education (KBE) give direction to school districts on issues such as the planning for improvements to existing facilities and construction of new facilities, including identification of the location of and need for new facilities. In KRS 157.420, one of the roles

delegated to KDE in KERA (Ky. Acts. 1990, ch. 476, Pt. III, § 106) was to survey and categorize existing school facilities. The definition of a "permanent" facility includes, *inter alia*, that it "has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding." An interpretation of KRS 159.070 which requires attendance areas to be drawn based solely on geographic proximity to students' homes without regard to capacity or overcrowding cannot be squared with the facilities categorization and planning guidelines established in KRS 157.420 and elsewhere.

By the promulgation of 702 KAR 4:050, which has been in effect and unchanged since 1992, the KBE has given direction having force and effect of law for selection of building sites for new schools. The selection of sites is guided by a local planning committee (LPC) established by 702 KAR 4:180, which devises a district facilities plan (DFP). Within the "Kentucky School Facilities Planning Manual" incorporated by reference in 702 KAR 4:180, schools are given comprehensive guidance in the process of determining the need for new facilities to be reported in the DFP. Part of that guidance mirrors the attendance area language of KRS 157.420, and requires attendance boundaries to be established in order to maintain enrollment near capacity, without overcrowding — there is no reference to geographic proximity to students' homes. Also in the manual is guidance for the LPC to determine recommended locations for development of new facilities and recommended renovations or additions to existing facilities. A construction of law by officers of an agency charged with its administration continued without interruption for a long period of time is entitled to controlling weight. *See Davidson v. Am. Freightways, Inc.*, 25 S.W.3d 94, 98 (Ky. 2000); *Hagan v. Farris*, 807 S.W.2d 488, 490 (Ky. 1991). Contrarily, if the Court of Appeals majority is correct in its interpretation of KRS 159.070, then the

planning process performed by the LPC under 702 KAR 4:180 and the site selection guidelines under 702 KAR 4:050 are *pro forma* and essentially without meaning or purpose, because in order to comply with the absolute mandate read into KRS 159.070 below, the need for and location of new facilities would be dictated solely by population density and geographic proximity without regard for any of the other factors identified in the referenced regulations.

CONCLUSION

The erroneous interpretation of the last sentence of KRS 159.070 given by the Court of Appeals majority significantly and materially affects each of the public common school districts in this Commonwealth whose interests are advocated by KSBA. The majority decision would wreak total havoc for the Board of Education of Fayette County tasked under KRS 160.290 with the "general control and management of the public schools in its district" and the obvious need to "establish schools and provide for courses and other services as it deems necessary for the promotion of education." The Court of Appeals majority decision failed to follow time honored cardinal rules of statutory construction. The Court of Appeals majority decision dilutes the ability of school districts to provide specialized services, equipment, and facilities to students in desperate need thereof, and thereby creates inefficiency in violation of the Kentucky Constitution. The Court of Appeals majority decision is contra to what was positively wrought by KERA and it must be reversed.

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