

## **West Virginia Board of Education Declaration of Intervention**

**WHEREAS**, there is established the State Board of School Finance, pursuant to W. Va. Code §18-9B-1, et seq; and

**WHEREAS**, pursuant to W. Va. Code §18-9A-17, the State Superintendent of Schools shall direct and carry out all provisions of the State Board of School Finance. Any references herein to the State Board of School Finance address the actions of the State Superintendent of Schools acting as the State Board of School Finance.

**WHEREAS**, the Boone County Board of Education is required, pursuant to W. Va. Code §18-9B-6, to on or before the date fixed by the budget calendar, submit its proposed budget to the State Superintendent together with such supporting schedules as the board may require; and

**WHEREAS**, the Boone County Board of Education submitted a budget to the State Superintendent on or before May 31, 2016; and

**WHEREAS**, the State Superintendent, pursuant to W. Va. Code §18-9B-7, must require that the budget of the Boone County Board of Education meet the following standards: (1) estimates of revenue and receipts are reasonable and accurate; (2) amounts are budgeted so as to cover actual requirements of school operation; and (3) amounts are budgeted so as to maintain the schools of the county for the employment term and the instructional term as defined in W. Va. Code §18-5-15; and

**WHEREAS**, the State Superintendent determined the budget of the Boone County Board of Education did not meet the requirements of law, in part because a realistic review of the budget revealed it was insufficient to cover actual expenses to sufficiently fund a full academic year and full employment term, and that the Boone County Board of Education would not be able to pay salaries and other costs beyond April or mid-May 2017; and

**WHEREAS**, if the State Superintendent, pursuant to W. Va. Code §18-9B-8, finds that a proposed budget will not maintain the educational program as well as other financial obligations of their county board of education, he may require that the budget be revised, but in no case shall permit the reduction of the instructional term pursuant to the provisions contained in W. Va. Code §18-5-15; and

**WHEREAS**, the State Superintendent did require that the budget of the Boone County Board of Education be revised to meet the requirements of law; and

**WHEREAS**, by letters dated the 29<sup>th</sup> day of June, 2016; the 1<sup>st</sup> day of July, 2016; and the 7<sup>th</sup> day of July 2016, the State Superintendent did issue directives containing actions believed necessary for the Boone County Board of Education to construct a budget meeting statutory requirements; and

**WHEREAS**, certain actions believed necessary for the Boone County Board of Education to construct a budget meeting statutory requirements may be taken only in response to directives by the State Superintendent, and therefore the directives not only provided direction for what the State Superintendent believed necessary for the Boone County Board of Education to construct an acceptable budget, but also provided the Boone County Board of Education the authority necessary to take those actions; and

**WHEREAS**, at a meeting of the Boone County Board of Education conducted on the 30th day of June, 2016, the Boone County Board of Education did by a unanimous vote of 5-0 fail to adopt any of the directives and failed to approve and submit a budget meeting statutory requirements; and

**WHEREAS**, by letter dated the 1st day of July, 2016, the State Superintendent did advise the Boone County Board of Education that it remained in noncompliance with statutory provisions requiring the submission of an acceptable budget, restated the offer of assistance, and gave the Boone County Board of Education until July 8, 2016, to reconsider its previous actions and submit an acceptable budget; and

**WHEREAS**, after many hours of discussions with officials and employees of the Boone County Board of Education, the parties did develop a draft budget that would meet statutory requirements, and by letter dated the 7<sup>th</sup> day of July, 2016, the State Superintendent advised the Boone County Board of Education of the existence of a draft budget and did reissue certain revised directives necessary for the Boone County Board of Education to accommodate the draft budget; and

**WHEREAS**, at a meeting of the Boone County Board of Education conducted on the 7th day of July, 2016, the Boone County Board of Education by a unanimous vote of 5-0 did again fail to adopt any of the directives and failed to meet the statutory requirement that it approve and submit a budget meeting statutory requirements; and

**WHEREAS**, by letter dated the 8<sup>th</sup> day of July, 2016, the State Superintendent again advised the Boone County Board of Education that it was required by law to adopt a budget meeting statutory requirements and advised the Boone County Board of Education that the State Superintendent would present to the West Virginia Board of Education the facts surrounding the situation at its meeting on July 13, 2016, and urged the Boone County Board of Education to present an acceptable budget on or before that date; and

**WHEREAS**, as of the date and time of the adoption of this Declaration, the Boone County Board of Education has not submitted a budget to the State Superintendent that meets statutory requirements nor has it adopted any of the directives of the State Superintendent believed necessary for the construction of an acceptable budget; and

**WHEREAS**, there are multiple consequences for the failure of the Boone County Board of Education to adopt an acceptable budget and comply with the directives of the State Superintendent, among which are:

1. The current estimate of receipts and expenditures reveals that the Boone County Board of Education will not have funds sufficient to pay salaries and operate schools beyond April or mid-May 2017, thus depriving students of a statutorily afforded complete instructional term; and
2. Because the State Superintendent, pursuant to W. Va. Code §18-9B-19, may withhold payment of state aid from a county board that fails or refuses to comply with the provisions of W. Va. Code §18-9B-1, et seq. or requirements of the State Superintendent, it is possible that the Boone County Board of Education will not receive its State Aid payment scheduled for disbursement July 18, 2016, and will not have funds sufficient to operate its schools and pay the salaries of its employees as early as August or September 2016.
3. The longer the Boone County Board of Education delays making the adjustments in expenditures necessary to construct an acceptable budget, and the more of its state allocated funds are spent in this fashion, the more severe the consequences will be of making those adjustments when finally they must be made; and

**WHEREAS**, the WVBE recognizes that the decline in the coal industry has resulted in substantial, perhaps unprecedented financial distress for Boone County. Among other consequences, revenues have declined, the benefits of the excess levy have declined, student enrollment has fallen, resulting in a relative reduction in state aid, and the overall economy of Boone County has suffered, all of which negatively affect the Boone County Board of Education; and

**WHEREAS**, for at least the past five (5) years, the Boone County Board of Education has experienced declining enrollments, decreasing financial reserves, and yet continued to maintain employee numbers over and above the school aid formula; and

**WHEREAS**, the West Virginia Board of Education acknowledges that for many years the revenues generated by the coal industry in Boone County have provided not just Boone County, but the entire State of West Virginia with substantial benefits, and the West Virginia Board of Education is committed to support any effort to secure supplemental funding from the Legislature to help address budget issues for the Boone County Board of Education, just as it did during the 2016 Special Session of the Legislature; and

**WHEREAS**, the West Virginia Board of Education recognizes the many difficult decisions already made by the Boone County Board of Education in response to the declining revenues, including the closing of schools and the reduction of the number of employees; and

**WHEREAS**, the West Virginia Board of Education understands that while voting for the directives the State Superintendent has instructed the Boone County Board of Education are necessary to construct a budget that meets statutory requirements is difficult and perhaps politically unpopular, the Boone County Board of Education has not approved these or other measures necessary to prepare an acceptable budget; and

**WHEREAS**, notwithstanding the economic issues faced, the prior difficult decisions made or the potential unpopularity of the actions directed by the State Superintendent, it is the statutory duty of the Boone County Board of Education to present to the State Superintendent a budget that meets all statutory requirements, among which are the guarantees that students will receive 180 days of instruction and employees will be paid for the minimum number of contract days, typically 200 days; and

**WHEREAS**, the Boone County Board of Education has options available to it, as unpopular as they might appear, to reconcile budgetary shortfalls which can allow it to operate under local control, but consistently takes no action to correct budgetary shortfalls; and

**WHEREAS**, if the Boone County Board of Education refuses to take the actions necessary to construct a budget that meets statutory requirements, the West Virginia Board of Education has no recourse than to intervene in the operation of the Boone County Board of Education and take the actions necessary to assure that students receive a full year of instruction, that employees are paid as required by law and that the issues that will lead to the inability of the Boone County Board of Education to provide a full year of instruction are addressed before they grow worse; and

**WHEREAS**, the West Virginia Board of Education has no desire to intervene in the operation of the Boone County Board of Education, but just like the Boone County Board of Education, the West Virginia Board of Education has a legal duty to take actions, even unpopular and undesired actions, when necessary to ensure the students a thorough and efficient education that fulfills all statutory requirements as to instructional term and a full employment term; and

**WHEREAS**, while some might believe that an intervention by the West Virginia Board of Education will only result in requiring the West Virginia Board of Education make the difficult decisions to construct a budget that the Boone County Board of Education will not make, and then a quick return of full authority to the Boone County Board of Education, in fact there are substantial and long-term consequences for the Boone County Board of Education and its members if it fails or refuses to meet its statutory duties to prepare and present an acceptable budget, among which are:

1. The elected members of the Boone County Board of Education will lose the authority to govern the school system of Boone County, something each member sought in good faith when he or she stood for election, and our experience is that this is a very unsatisfactory, disappointing, and yet necessary part of an intervention.
2. Recognizing that constructing an acceptable budget will require difficult decisions that might result in further reduction of staff, change in employee benefits, realignment or closure of schools or other very consequential decisions for the citizens of Boone County, the members of the Boone County Board of Education will have sacrificed their legal authority to make those decisions.
3. The members of the Boone County Board of Education may open themselves to

accusations of malfeasance or neglect of duty, among other things, and the consequences thereof.

**WHEREAS**, the Boone County Board of Education can void the intervention by the West Virginia Board of Education if it makes the difficult decisions and takes the necessary actions to construct an acceptable budget and present the same to the State Superintendent on or before the 18<sup>th</sup> day of July, 2016.

**NOW THEREFORE**, as a result of the foregoing actions of the Boone County Board of Education, pursuant to the authority granted to it in W. Va. Code §18-2E-5-(n), and pursuant to the Constitutional grant of general supervision of free schools, the West Virginia Board of Education (WVBE) hereby intervenes into the operation of the Boone County Board of Education to be effective July 18, 2016, and assigns the school system non-approval status in order to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided to the students in Boone County.

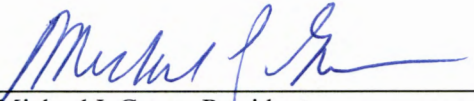
The WVBE, pursuant to the authority granted to it pursuant to W. Va. Code §18-2E-5(m)(4)(C)(i)-(vi), and pursuant to the Constitutional grant of general supervision of free schools, hereby takes the following additional actions to be effective July 18, 2016:

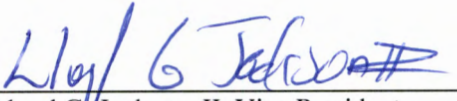
1. Limits the authority of the Boone County Board of Education as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules, and other requirements established by WVBE rule, and delegates the decision-making authority regarding these matters to the State Superintendent of Schools;
2. Declares the office of the county superintendent to be vacant, and delegates to the State Superintendent the authority to appoint a Superintendent of Boone County Schools to serve at his will and pleasure and set his or her salary;
3. Delegates to the State Superintendent the authority to declare that the positions of personnel who serve at the will and pleasure of the county superintendent as provided in section one [§18A-2-1], article two, chapter eighteen-a of the Code of West Virginia, are vacant, subject to application and reemployment;
4. Delegates to the State Superintendent the authority to conduct hearings on personnel matters and school closure or consolidation matters and subsequently to render the resulting decisions, and the authority to appoint a designee for the limited purpose of conducting hearings while reserving to the State Superintendent the authority to render the resulting decision;
5. Limits the authority of the Boone County Board of Education as to the ability to conduct real estate transactions and delegate to the State Superintendent the authority to act in lieu of the Boone County Board of Education in a transfer, sale, purchase or other transaction regarding real estate;

6. Delegates to the State Superintendent the authority to replace administrators and principals in low performing schools and to transfer them to alternate professional positions within the county at his or her discretion;
7. Delegates to the State Superintendent the authority to fill positions of administrators and principals with individuals determined by the State Superintendent to be the most qualified for the positions;
8. Grants the State Superintendent all authority necessary to take whatever action the State Superintendent deems appropriate to correct the non-approval status of the Boone County school system.
9. Directs that monthly status reports from the State Superintendent or his designee regarding progress toward correcting the non-approval status of the Boone County school system be provided to the Board at its monthly business meetings.
10. Directs that the State Superintendent and the appointed Superintendent of Boone County Schools jointly develop a set of standards that must be met before full control of that school system will be returned to the Boone County Board of Education and that an annual meeting with the Boone County Board of Education will take place to review progress in meeting those standards.

**FINALLY**, the West Virginia Board of Education declares that, if at any time prior to July 18, 2016, the Boone County Board of Education takes action to approve a demonstrably accurate and fiscally sufficient budget which meets the satisfaction and approval of the Board of School Finance, these actions regarding intervention into the operation of the Boone County Board of Education shall be void.

Approved this, the 14<sup>th</sup> day of July, 2016, by a vote of the West Virginia Board of Education.

  
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Michael I. Green, President

  
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Lloyd G. Jackson, II, Vice President