KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

Topic: Waiver Request 2026-WV-085, Bullitt County Schools.
Date: November 2026
Action Requested: ☐Review ☐Action/Consent ☒Action/Discussion
Held In: ☒Full Board **Committee:** ☐ School Improvement ☐ Waiver & Innovation ☐ Awards

SYNOPSIS OF WHAT YOU WILL BE SHARING:

The Kentucky Board of Education must consider whether it will approve or deny the waiver requested pursuant to KRS 156.161 and 701 KAR 5:170.

COMMISSIONER'S RECOMMENDATION:

KRS 156.161 provides: "The department and the commissioner shall not recommend approval or denial to the state board, but may provide the benefits and disadvantages of approving the waiver request."

Following review and evaluation of the request, the Commissioner notes the following benefits and disadvantages of approving the request:

Benefits of Approval: The district will be able to proceed with the process in 702 KAR 4:050 for obtaining approval to acquire the real property. If the waiver is not granted, the district will have to pursue relocation or extinguishment of the easement and the district states that "[s]uch action would create unnecessary costs, administrative burdens, and project delays, potentially hindering the timely acquisition and development of the site for school purposes."

Disadvantages of Approval: None noted.

APPLICABLE STATUTE OR REGULATION:

KRS 156.161 and 701 KAR 5:170
702 KAR 4:050, Section 4(4)(b), which provides in part that "The property shall not have easements traversing the site. Easements are allowable along perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered."

BACKGROUND

Existing Policy:
KRS 156.161 authorizes the Kentucky Board of Education to promulgate administrative regulations establishing procedures for processing requests to waive statutes or administrative regulations. Pursuant to this authority, the KBE promulgated 701 KAR 5:170 setting forth the procedures and forms a school district may utilize to request waivers from the KBE. Pursuant to KRS 156.161, the KBE may not waive any statute or administrative regulation:
(a) Relating to health and safety, including required criminal background checks for staff and volunteers specified in KRS 160.380 and 161.148;
(b) Relating to civil rights;
(c) Required by federal law;
(d) Relating to compulsory attendance requirements under KRS 158.030 and 158.100, or the recording of

data necessary for participation in the fund to support education excellence in Kentucky;
(e) Establishing certification requirements for teachers, except a waiver may authorize up to twenty-five percent (25%) of the teaching staff of a school may be employed without teacher certification if the individual possesses a: (1) Baccalaureate or graduate degree in the subject the individual is hired to teach; or (2) Recognized industry credential in the technical education area the individual is hired to teach;
(f) Requiring students' participation in state assessment of student performance as required under KRS 158.6453;
(g) Financial audits, audit procedures, and audit requirements under KRS 156.265;
(h) Open records and open meeting requirements under KRS Chapter 61;
(i) Purchasing requirements and limitations under KRS Chapter 45A and KRS 156.074 and 156.480; or
(j) Requiring instructional time that is at least equivalent to the student instructional year specified in KRS 158.070.

Pursuant to 701 KAR 5:170, when KDE receives a waiver request from a school district, it must first perform a technical review to determine whether the waiver meets minimum technical requirements to advance to substantive review.

Those portions of the waiver request that advance to substantive review, if any, are reviewed and evaluated considering the following factors:
(a) The entirety of the waiver request;
(b) Student academic achievement for the past three full school years for which data is available in the schools and programs identified in the waiver request;
(c) Whether and to what extent the waiver request describes processes the requesting party will utilize to measure success as a result of the waiver, if granted, using data and accountability;
(d) The likelihood of the schools and programs identified in the waiver request realizing meaningful operational efficiency improvements if the waiver is granted;
(e) The likelihood of the students enrolled in the schools and programs identified in the waiver request realizing improved academic achievement if the waiver is granted;
(f) Whether and to what extent the waiver request reasonably anticipates potential adverse impacts on student academic achievement and addresses such potential adverse impacts;
(g) Whether and to what extent the waiver request demonstrates the establishment of high expectations for student learning and evidence based best practices for learning in the schools and programs identified in the request; and
(h) For requests seeking identification as a School of Innovation, the likelihood of improving student outcomes in a manner that would be difficult or impossible without a waiver.

Following review and evaluation, the Commissioner shall provide an analysis to the Kentucky Board of Education, including the benefits and disadvantages of approving the request, along with the Commissioner's determination whether he finds the requested waiver is more likely than not: (a) To improve school or program operations without hindering student academic achievement; or (b) To improve student academic achievement at the school or program.

If a waiver is granted, it shall expire on June 30 of the third full school year after the request was first approved, except for facility waivers which "shall not expire unless the state board specifically provides for expiration when granting the waiver." KRS 156.161.

Summary of Issue:
Following receipt of the waiver request, KDE performed a technical review pursuant to 701 KAR 5:170, Section 3. As a result of its technical review, KDE determined requests to waive the following statutes and administrative regulations should undergo substantive review: 702 KAR 4:050, Section 4(4)(b) as it relates to a traversing utility easement on real property the district desires to acquire and develop for expansion of the Mount Washington Middle School and future school facilities.

KDE's District Facilities Branch (DFB) performed a substantive review of the waiver request. The waiver request was reviewed in its entirety and DFB has had conversations with the district. The following factors listed in 701 KAR 5:170 Section 4(2) were determined to not be applicable:
(b) Student academic achievement for the past three (3) full school years for which data is available in the schools and programs identified in the waiver request;
(c) Whether and to what extent the waiver request describes processes the requesting party will utilize to measure success as a result of the waiver, if granted, using data and accountability; […]
(e) The likelihood of the students enrolled in the schools and programs identified in the waiver request realizing improved academic achievement if the waiver is granted; […]
(g) Whether and to what extent the waiver request demonstrates the establishment of high expectations for student learning and evidence based best practices for learning in the schools and programs identified in the request; and
(h) For waiver requests seeking identification as a school of innovation, the likelihood of improving student outcomes in a manner that would be difficult or impossible without a waiver.

DFB reviewed the following additional factors listed in 701 KAR 5:170 Section 4(2):

(d) The likelihood of the schools and programs identified in the waiver request realizing meaningful operational efficiency improvements if the waiver is granted; […]
(f) Whether and to what extent the waiver request reasonably anticipates potential adverse impacts on student academic achievement and addresses such potential adverse impacts[.]

702 KAR 4:050, Section 4(4)(b), provides in part that "The property shall not have easements traversing the site. Easements are allowable along perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered." The easement at issue is a utility easement and the district states the following in its waiver request: "The existing Louisville Gas and Electric Company easement does not prevent the District from constructing, operating, or maintaining the proposed school improvements. The easement does not materially interfere with building placement, site access, utilities, student circulation, safety, or other operational aspects of the proposed expansion." The district states in its waiver request that compliance with 702 KAR 4:050, Section 4(4)(b) "would require the District to pursue relocation or extinguishment of an easement that does not adversely affect the educational use of the property. Such action would create unnecessary costs, administrative burdens, and project delays, potentially hindering the timely acquisition and development of the site for school purposes." Therefore, regarding 701 KAR 5:170 Section 4(2)(d), it is likely that granting this waiver would result in the district realizing operational efficiency improvements.

Regarding 701 KAR 5:170 Section 4(2)(f), the district states in its waiver request that "[t]he District does not anticipate that granting the requested waiver will hinder student academic achievement or negatively impact educational opportunities."

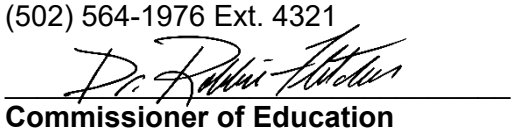
Pursuant to 701 KAR 5:170 Section 4(3), the Commissioner finds that the requested waiver is more likely than not to improve school operations without hindering student academic achievement.

Budget Impact:
Other than staff time reviewing and processing this waiver request, there is no additional budget impact to KDE regardless of whether the waiver is granted or denied by the KBE.

Groups Consulted and a Brief Summary of Responses:
As this is a waiver request for an individual public school district, no additional groups were consulted. KDE followed the KBE regulation 701 KAR 5:170 to process and review the waiver request.

CONTACT PERSON(S):

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Commissioner of Education

GOALS/PRIORITIES: Indicate all applicable options.

☐ **Foster Educational Innovation Through Vibrant Learning Experiences**
☐ **Advance Educational Excellence Through Continuous Professional Improvement**
☐ **Cultivate Collaborative Partnerships**
☐ **Legislation**
☒ **Commissioner's Management**