KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

Topic: Waiver Request 2026-WV-086, Kenton County Schools, District Facility Plan.
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 Kenton County School District will not have to convene a new Local Planning Committee (LPC). The LPC provides a recommendation to the local board regarding whether a new District Facilities Plan (DFP) is necessary and the Kenton County Board of Education has already determined that a new DFP is not necessary and unanimously voted to request an extension of the current DFP through the waiver process established in Section 501 of the Kentucky School Facilities Planning Manual, incorporated by reference in 702 KAR 4:180.

Disadvantages of Approval: None.

APPLICABLE STATUTE OR REGULATION:

KRS 156.161 and 701 KAR 5:170
Section 501.3-501.5 of the Kentucky School Facilities Planning Manual, incorporated by reference in 702 KAR 4:180.

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: Section 501.3-501.5 of the Kentucky School Facilities Planning Manual, incorporated by reference in 702 KAR 4:180.

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[.]

The Kentucky School Facilities Planning Manual (as incorporated by reference in 702 KAR 4:180), Section 501 sets forth a waiver process for local boards to request a waiver from KDE to extend their current District Facilities Plan (DFP). The criteria under which KDE may approve the waiver is set forth in 501.1(1) and (2).

Prior to requesting a waiver under Section 501 from KDE, a district must convene a "newly constituted" Local Planning Committee (LPC). Convening a new LPC consists of new individuals being appointed to the LPC. Section 501.3 requires the new LPC to "conduct a scheduled, advertised public meeting to review the current DFP and the district's financial, demographic and physical condition." The new LPC, by unanimous vote, determines whether to recommend to the local board of education that the local board request a waiver from KDE to extend the current DFP. The local board must vote unanimously to approve the request for a waiver from KDE to extend its current DFP.

Kenton County states in its waiver request that it wants to continue with its current DFP until 2031 and that the local board of education has already unanimously voted to request an extension of the current DFP. The district does not want to convene a new LPC and states in its waiver request that it "has not experienced significant changes in enrollment trends, educational programming, facility utilization, or capital facility needs that would materially affect the recommendations or priorities contained within the current DFP, it would be an inefficient use of district personnel and LPC community volunteers' time and resources to convene a new Local Planning Committee (LPC) only to recommend the same plan to the Board of Education (Board) for consideration." The district further notes in its waiver request that it meets the criteria set forth in the Kentucky School Facilities Planning Manual (as incorporated by reference in 702 KAR 4:180) Sect. 501.1 to extend the current DFP.

Regarding 701 KAR 5:170 Section 4(2)(d), the new LPC provides a recommendation to the local board and here the local board has already unanimously voted to request an extension of

the current DFP. Therefore, it is likely that granting this waiver would result in the district realizing operational efficiency improvements by not having to convene a new LPC because the local board has already acted on the matter and does not desire the input of a new LPC.

Regarding 701 KAR 5:170 Section 4(2)(f), the district states in its waiver request that "[a]pproval of this waiver request will not hinder student academic achievement because the current DFP will continue through 2031 and allow the District to continue to maintain and improve all facilities with a LPC and Board approved plan that is still effective and relevant for the District's needs."

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.

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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**