

**STATEMENT OF CONSIDERATION
Relating to 701 KAR 5:140
Districts of Innovation**

Kentucky Department of Education

Amended After Comments

(1) A public hearing on 701 KAR 5:140 was held on December 21, 2012 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601.

(2) The following people attended this public hearing or submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Sharron Oxendine, President	Kentucky Education Association (KEA)
Mary Ann Blankenship, Executive Director	KEA
Lynne Slone, Legal Counsel	Kentucky Association of School Councils (KASC)

(3) The following people from the promulgating administrative body attended this public hearing or responded to the written comments:

Name and Title

Kevin C. Brown, Associate Commissioner and General Counsel
David Cook, Director
Jocelyn Mills, Education Administration Program Manager
Amy Peabody, Assistant General Counsel

Summary of Comments and Responses

(1) Subject Matter: Statutory requirements for an approved application: Vote to participate in district plan

(a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that, as defined in KRS 160.107(3)(b) and paragraph 3 of the administrative regulation, the “eligible employees” who may vote on the adoption of a school's plan of innovation include not only the “employees that are regularly employed at the school,” but also “employees whose primary job duties will be affected by the plan.” They stated that KRS 160.107(4)(b) has a differing standard that governs a school of innovation's approval of a request for waiver of rights and responsibilities under KRS 160.345. They are concerned that without clarification from the regulation, “employees whose primary job duties will be

- affected by the plan” could include school district employees who are not even employed at the school that is affected by the plan. They commented that the administrative regulation should make it clear that only eligible voters who are employed at a specific school are eligible to vote upon that school's inclusion in a school district's proposed plan of innovation.
- (b) Response: A change has been made in response to this comment. The agency has revised Section 1(3) of the administrative regulation to clarify who is eligible to participate in the vote described in KRS 160.107(3).
- (2) Subject Matter: Statutory requirements for an approved application: Schools participating in district plan
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that the proposed regulation shall require a school district to include persistently low-achieving schools and some district operated schools in a plan of innovation, even if these schools never voted to participate in the innovation plan. They commented that the administrative regulation suggests that district operated schools may be required to be schools of innovation even if the local school board does not believe that the inclusion of these schools is necessary or desirable. They stated that the administrative regulation should make it clear that discretion rests with the district board of education and with each individual school on this issue, not state agencies or state officials.
- (b) Response: A change has been made in response to this comment. The agency has revised Section 3(2) of the administrative regulation to clarify that only those schools that voluntarily choose to participate and those persistently low-achieving schools the districts chooses to include, and any district operated schools are included in the district's application to participate in the Districts of Innovation program.
- (3) Subject Matter: Statutory requirements for an approved application: Stakeholder support for district plan
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA and Ms. Sloane of KASC stated that KRS 160.107(1)(d) provides that “a district which is an applicant to be designated as a district of innovation under KRS 156.108 shall ... provide documentation of community, educator, parental, and the local board's support of the proposed innovations.” Ms. Oxendine and Ms. Blankenship stated that section 3 paragraph 4(h) of the administrative regulation does *not* include professional educators and local school board members among the persons who must support a plan of innovation. The administrative regulation requires only “documentation of broad support for innovations including parents, local institutions of higher education, and business and community partners.” Ms. Sloane was also concerned about the evidence of parental involvement.
- (b) Response: A change has been made in response to these two comments. The agency has revised Section 3 (4)(h)(4) of the administrative regulation to include educators and to change “may to “shall” to clarify the intent to require the support of these stakeholder groups. The regulatory language was an attempt not to limit the ways in

which a district application could show stakeholder support. The omission of educators was not intentional. Participation by schools other than persistently low-achieving or district operated schools in the District of Innovation plan requires an affirmative vote of 70% of the eligible employees in the school.

(4) Subject Matter: Defining innovation

- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that the administrative regulation too broadly defines the phrase “innovative strategies.” They stated that the phrase “innovative strategies” means every policy or practice that governs any aspect of the public education program. They stated that their concern is that an innovation plan based on “new innovative strategies or models created by the district or school” could apparently be approved and implemented even if the innovation plan presented no empirical evidence that the newly-created “innovative strategy” is likely to be effective in improving public education in the school district. They stated that there is no statutory authority or logical basis for such a comprehensive revision of established educational practice or philosophy.
- (b) Response: No changes have been made in response to this comment. KRS 156.108 (the governing statute for this administrative regulation) states in Section 1, paragraph 1, sub-paragraph (b): “‘Innovation’ means a new or creative alternative to existing instructional and administrative practices intended to improve student learning and student performance of all students;...” The statute thus defines new approaches to both “instructional and administrative practices.” The creation of new ideas and approaches is the single purpose of KRS 156.108 and 160.107. By passage of the legislation creating these two statutes, the General Assembly has given specific authority to school districts to pursue these innovations with the approval of the Kentucky Board of Education. The administrative regulation defines the phrase “innovative strategies” as “nontraditional approaches to all areas of curriculum, instruction, assessment, governance, and school operation.” The “logical” basis for these new approaches is the fact that our current system isn’t working for many of our students. Participation by schools other than persistently low-achieving or district operated schools in the District of Innovation plan requires an affirmative vote of 70% of the eligible employees in the school.

(5) Subject Matter: Innovative strategies

- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that some of the “innovative strategies” that are specifically endorsed in the administrative regulation have been controversial. The commenters gave as examples: early graduation programs, lengthening or flexing the school day and school year, alternative forms of school governance that do not meet the requirements of KRS 160.345, changing the traditional roles of teachers and instructional assistants, and compensating staff on schedules other than single salary schedules. They contend there is no persuasive evidence or credible research that any of these strategies will improve instruction or school governance.
- (b) Response: No changes have been made in response to this comment. KRS 160.107(5) lists all of these strategies in Section 5 as the areas that may be approved

in a District of Innovation application. There have been numerous studies that do, in fact, show these strategies to have a positive impact on student achievement. The National Education Association itself has publicly endorsed utilization of the “expanded learning opportunities” such as extended school days or year innovation strategies since 2008. By passage of the legislation creating these two statutes, the General Assembly has given specific authority to school districts to pursue these innovations with the approval of the Kentucky Board of Education. The administrative regulation seeks to provide guidance to local school districts about the areas of innovation where new approaches would most likely be effective, per the language of KRS 160.107. Participation by schools other than persistently low-achieving or district operated schools in the District of Innovation plan requires an affirmative vote of 70% of the eligible employees in the school.

- (6) Subject Matter: Policy, regulatory and statutory flexibility
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that the governing statutes, KRS 156.108 and 160.107, set very clear limits on what administrative regulations and statutes can be waived under a District of Innovation plan and stated that the governing statutes also distinguish between “flexibility” and “waiver.” The commenters stated that despite these clear and comprehensive statutory requirements and limitations, the administrative regulation supposedly allows some innovative school districts to simply ignore many statutory requirements that are not “selected” for possible “flexibility” in KRS 160.107(5). The commenters also stated that these provisions of the statutes are overly broad.
- (b) Response: A change has been made in response to this comment. The agency has removed the content originally included in Section 2(2) of the administrative regulation because it is redundant to KRS 160.107(2). Two additional items bare mention here: 1) The Kentucky Board of Education already possesses the authority to grant local school districts’ requests for waiver of its regulations pursuant to KRS 156.160(2); and 2) The Education Professional Standards Board and its administrative regulations are never mentioned in this administrative regulation. Participation by schools other than persistently low-achieving or district operated schools in the District of Innovation plan requires an affirmative vote of 70% of the eligible employees in the school. Finally, the “overly broad” comment is aimed at the legislation, not the administrative regulation, and the statutes, KRS 156.108 and 160.107, are not overly broad.

- (7) Subject Matter: Constitutionality of regulation
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that “flexibility” and “waiver” are two very different things. They stated that even if it were constitutionally possible to grant a school district’s well-founded request for “flexibility” in the enforcement of a general education statute, Sections 59 and 60 of the Kentucky Constitution make it crystal clear that the General Assembly has no power to *waive* the enforcement of a general statute for specific schools or school districts in the interest of encouraging local “innovation.” They stated that if KRS

156.108(2) has that effect, it is unconstitutional. They stated that since Sections 59 and 60 of the Kentucky Constitution do not allow the General Assembly to enact local or special legislation, and also prohibit the General Assembly from exempting a local school district from the enforcement of statutes that have general effect, KRS 156.108(2) could not authorize the Kentucky Board of Education to do something that the General Assembly could not do itself. They stated the administrative regulation unconstitutionally allows the Kentucky Board of Education to repeal statutes for selected school districts that the Board of Education views as “innovative.” They stated that Section 28 of the Kentucky Constitution provides that “no person or collection of person, being one of those [legislative, executive or judicial] departments, shall exercise any power properly belonging to either of the others, except in the circumstances hereinafter expressly directed or permitted.” In addition, they stated Sections 28 and 29 of the Kentucky Constitution mean that the Kentucky Board of Education has no constitutional power as an agency of the executive branch of government to assume the General Assembly's legislative authority over local schools or to waive the requirements of the statutes that generally apply to local school districts and Sections 28 and 29 of the Kentucky Constitution prohibit the Kentucky General Assembly from delegating its legislative authority to an executive branch agency such as the Kentucky Board of Education.

- (b) Response: No changes have been made in response to this comment. Kentucky Constitution Sections 59 and 60 prohibits the General Assembly from passing special legislation on a multitude of areas including the management of the common schools of our state. Per KRS 158.030, the “common schools” include “an elementary or secondary school of the state supported in whole or in part by public taxation” (e.g., the public schools of our state). The Kentucky Board of Education is provided authority over the common schools of our state generally in KRS Chapters 156, 157, 158, 159, 160, 161, and 162. A violation of the Kentucky Constitution Sections 59 and 60 by the General Assembly requires enactment of legislation which “arbitrarily or beyond reasonable justification discriminates against some persons or objects and favors others” and grants “special privileges, favoritism, and [allows] discrimination....” *Kentucky Harlan Coal Co. v. Commonwealth*, 872 S.W.2d 446, 452 (Ky. 1994). “Where the classification enacted by the legislature in the statute has a reasonable basis, such law does not constitute special or local legislation within the prohibition of Section 59 of the Kentucky Constitution nor does it deny the equal protection guaranteed by the United States Constitution. When the purpose of the enactment is to correct a prior legislative inequity, then the classification which accomplishes that purpose will be permitted. *Harlan Coal*, 872 S.W.2d at 452. “It is well established that in order for a law to be constitutionally general and not special legislation, the classification must be based upon a reasonable and natural distinction which relates to the purpose of the act and the legislation must apply equally to all in a class.” *St. Luke's Hospital, Inc. v. Health Policy Board*, 913 S.W.2d 1, 3 (Ky.App. 1996). Here, the Kentucky General Assembly lawfully passed legislation enacting KRS 156.108 and 160.107 which provided specific boundaries, requirements, and definitions for the Districts of Innovation program. Each school district in Kentucky may choose to participate and to request and receive exemption from the types of statutes or regulation described in KRS 156.108 and 160.107. The General

Assembly's action in creating these two statutes did not "arbitrarily or beyond reasonable justification discriminate[] against some [schools] ... and favor[] others...." An example of when these constitutional provisions were violated was when the Kentucky General Assembly passed legislation which in practice benefitted only one, private, postsecondary institution. See, *University of the Cumberlands v. Pennybacker*, 308 S.W.3d 668, 685 (Ky. 2010). Kentucky Constitution Sections 59 and 60 are not violated by KRS 156.108, KRS 160.107, or this administrative regulation. Though unsuccessful when pursued in any avenue, this argument takes aim at the enabling legislation, not this administrative regulation. Kentucky Constitution Sections 29 and 30 vest legislative authority in the "General Assembly of the Commonwealth of Kentucky" and prohibit the delegation of that authority to another entity. "...[L]egislative powers may not be conferred upon any executive board, but administrative powers may be conferred upon a board without violating those provisions of the Constitution requiring a separation of legislative, executive, and judicial departments. By the provisions of section 29 of the Constitution all legislative power is vested in the General Assembly, but that section does not forbid the delegation of administrative powers...." *Estes v. State Highway Commission*, 29 S.W.2d 583, 586 (Ky. 1930). A violation of these constitutional sections was found in a case in which "the legislature has given no guidance to the [agency] by defining the words [key to the legislation and its implementation]. This part of the statute amounts to an unconstitutional delegation of the legislative power" *Flying J Travel Plaza v. Commonwealth*, 928 S.W.2d 344 (Ky. 1996). Here, the Kentucky General Assembly did not delegate its legislative authority to the Kentucky Board of Education. The General Assembly provided definitions; specific boundaries of waiver of statutes, regulation, and board policies; and dictated the required components of the administrative regulation as well as school district applications and participation in the program. Kentucky Constitution Sections 28 and 29 are not violated by KRS 156.108, KRS 160.107, or this administrative regulation. This argument as well takes aim at the enabling legislation, not this administrative regulation.

- (8) Subject Matter: Plan implementation
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated the proposed regulation allows approval and implementation of an innovation plan in the middle of a school term. They recommended that districts of innovation plans be approved well in advance of a new school term and should only be implemented after school employees have been trained to effectively implement the approved "innovative strategies" that are, by definition, "nontraditional" and contrary to existing instructional practices.
- (b) Response: A change has been made in response to this comment. The agency has revised Section 3 (1) of the administrative regulation to clarify the timeframe for implementation of approved District of Innovation plans. While the original language did require application submission a minimum of 180 days prior to implementation, the new language further clarifies that implementation shall as well only begin at the start of a school term.

- (9) Subject Matter: School governance and parental involvement
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA and Ms. Slone from KASC stated that the administrative regulation allows for alternate forms of school governance without creating a set of standards for approving waivers to KRS 160.345. They further stated that the administrative regulation fails to recognize the stringent statutory criteria for granting this waiver. Ms. Slone also stated a concern that parental involvement is not addressed in a school that votes to waive KRS 160.345.
- (c) Response: A change has been made in response to this comment. The agency has added a new sub-section "m" to Section 3(4) of the administrative regulation to require applications to include a description of the governance model to be used in any school that has voted to waive KRS 160.345. The new governance model shall ensure that teachers, parents, and staff continue to share leadership responsibilities as outlined in KRS 160.107(4)(d). It should also be noted that no change in governance can be included in the plan without the vote of the staff and the school council, per KRS 160.107(4)(b). Participation by schools other than persistently low-achieving or district operated schools in the District of Innovation plan requires an affirmative vote of 70% of the eligible employees in the school and changes to KRS 160.345 requires an additional affirmative vote of 70% of the teachers and staff in the school and approval of the school council.
- (10) Subject Matter: Plan amendments
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that the administrative regulation does not provide a process for requesting amendments to the approved innovation plan. The commenters stated that the administrative regulation only provides for amendment of the district's application.
- (b) Response: A change has been made in response to this comment. The agency has modified the language in Section 3(7) of the administrative regulation to better clarify the process for amending the approved district plan.
- (11) Subject Matter: Due process for appeals of revocation of District of Innovation status
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA and Ms. Slone of KASC stated a due process problem exists since the Kentucky Board of Education approves the application, makes the decision to revoke the status if the district isn't following its plan, and then hears the appeal if the district disagrees.
- (b) Response: No changes have been made in response to this comment. The procedural due process afforded school districts in the application and participation in the Districts of Innovation program is sufficient to comply with the due process requirements of law. First, participation in the District of Innovation program does not create or involve a property interest protected by the procedural due process requirements of federal and state law. (See the discussion of a due process protected property interest in *Teco Mechanical Contractor, Inc. v. Commonwealth*, 366 S.W.3d 386, 393-97 (Ky. 2012).) Additionally, the first level of review of initial and resubmitted applications, plan amendments, participation revocation, and participation renewal is before a committee established by the Commissioner and

then reviewed by the Kentucky Board of Education. These procedural due process protections are sufficient to comply with federal and state law.

- (12) Subject Matter: Job-embedded professional development
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that the administrative regulation requires an application for District of Innovation to include “a description of how the school district shall support job-embedded professional learning.” They stated that such a requirement, if it leads to professional development (PD) requirements in excess of those stated by school council policies that have been adopted pursuant to KRS 160.345(2)(1), the administrative regulation unlawfully intrudes upon the statutory authority of the school councils at innovative schools.
 - (b) Response: No change has been made in response to this comment. This is a requirement clearly spelled out in KRS 156.108(4)(k). Once again, no school shall be required to participate in any way in the District of Innovation plan, including additional PD, without an affirmative vote of 70% of the eligible employees in the school.
- (13) Subject Matter: Cost of plan implementation
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that the fiscal note attached to the administrative regulation does not give detail for the cost estimate and stated that the Kentucky Board of Education cannot know the cost of implementing or maintaining a District of Innovation plan.
 - (c) Response: No change has been made in response to this comment. The fiscal note reflects the cost of implementing the administrative regulation. The cost of implementing the administrative regulation is that of monitoring plan implementation. The agency estimates that cost to be \$5,000 per approved district. It is not possible to estimate the cost of implementing the plans themselves since some approved districts will change the priorities of existing funds, some will solicit external partners, and some will find ways to accomplish the innovative strategies in a cost neutral way.
- (14) Subject Matter: Required votes at the school level
- (a) Comment: Ms. Slone of KASC stated that the proposed regulation is misleading regarding the various votes that must be taken at the school level to agree to participation in the plan and whether to waive some or all of KRS 160.345. She stated that there are three votes in total: 1) the 70% vote to participate; 2) the 70% vote of staff to agree to waive some or all of KRS 160.345; and 3) the vote of the school council to validate the 70% vote to waive KRS 160.345.
 - (b) Response: A change has been made in response to this comment. A new sub-section (5) has been added to Section 3(4)(h) that clarifies the additional two votes that are required should a school desire to waive any part of KRS 160.345.
- (15) Subject Matter: SBDM chair signature on school plan
- (a) Comment: Ms. Slone of KASC stated that the administrative regulation is misleading regarding the effect of the signature of the chair of the school council and stated a concern that the administrative regulation implies that the chair can make this decision alone.

- (b) Response: A change has been made in response to this comment. The changes made to Section 3 (4)(h), described previously, adequately address this concern.
- (16) Subject Matter: Official applicant
- (a) Comment: Ms. Slone of KASC stated that the administrative regulation is confusing as to what is necessary for the district plan as opposed to the school plans. She also stated the administrative regulation is not clear as to what happens to individual schools in the approved plan should the district status be revoked.
- (b) Response: No change has been made in response to this comment. KRS 156.108(2) is clear that the Kentucky Board of Education is authorized to approve “districts” of innovation, not schools. Individual school plans are included as part of the district’s plan so the review committee can have a complete picture of the district’s plan. Since the applying and approved entity in this case is the school district, if an approved District of Innovation has its status revoked, all schools participating in that plan would also have their status revoked.
- (17) Subject matter: Duplication of statutory language
- (a) Comment: Ms. Oxendine and Ms. Blankenship of KEA stated that the Kentucky Board of Education has violated KRS 13A.120(2)(e and f) and (4) by promulgating an administrative regulation which prescribes the same or similar procedure set forth in a statute and by duplicating a comprehensive scheme set forth in a statute.
- (b) Response: A change has been made in response to this comment. The agency has removed the content originally included in Section 2(2) of the administrative regulation because it is redundant to KRS 160.107(2).

Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The agency received several comments in support of the administrative regulation, indicating that the administrative regulation is seen as a positive step forward in allowing school districts to create new and innovative methods to ensure more students achieve college and career readiness.

Two commenters requested seventeen changes to the administrative regulation. The agency made ten revisions as a result of those comments. The agency determined the seven remaining suggestions should not be adopted because they either violate the intent of the governing statutes or, in one case, rely upon an inaccurate constitutional argument.

One commenter made multiple technical requests. Three of these requests involved determining how participation in a district of innovation plan would be determined. Changes were made in response to all three comments. An additional change was made in response to this commenter’s concern about the administrative regulation repeating language from the governing statutes. An additional two comments questioned the language in the governing statutes defining “innovation” and describing the kinds of innovation allowed under this administrative regulation. The agency declined to make changes since that would put the administrative regulation in conflict with the governing statutes. This commenter also questioned the constitutionality of the

governing statutes. This comment was addressed by the agency; however, the commenter's concern lies with the statute, not the administrative regulation. Finally, this commenter made multiple comments regarding plan implementation and plan amendments. Changes were made to both as a result of these comments.

Another commenter expressed concerns of primarily a technical nature. This commenter was concerned about votes required for plan participation, school governance, and parental involvement. Changes were made to the administrative regulation related to school votes, signatures, school governance, and parental involvement. This commenter also commented on issues of due process and questions of official applicant. The agency addressed those concerns but chose not to make any changes related to these issues.

The agency proposes the following amendments after comments:

Page 2

Section 1 (3)

Line 2

After "KRS 160.107" insert: "(3)(b)".

Pages 2 and 3

Section 2 (2)

Lines 15-23, Lines 1-7

Delete the entire section.

Page 3

Section 2 (2)

Line 8

Insert: "2".

Delete: "3".

Page 4

Section 3 (1)

Lines 5-6

After "the Department at any time within the calendar year", insert:

"All implementations of approved applications shall begin at the start of a school term and".

Delete the following:

"provided the implementation date is".

Page 4

Section 3 (2)

Line 10

After "that the district" insert the following:

"chooses to make".

Delete the following:

“is requiring to be”.

Page 5

Section 3(4)(h)

Line 15

After “broad support for innovations including”, insert: “educators”.

Page 5

Section 3(4)(h)

Lines 16-17

After “This documentation”, insert: “shall”.

Delete: “may”.

Page 6

Section 3(4)(h)(3)

Line 2

After “affirmative vote of at least”, insert the following:

“seventy percent”.

After “70”, insert: “)”.

Page 6

Section 3(4)(h)(3)

Line 3

After “application itself;”, delete: “and”.

Page 6

Section 3(4)(h)(3)

Line 5

After “business groups;”, insert: “and”.

Page 6

Section 3(4)(h)

Lines 6-7

Add a new sub-section “5” to Section 3(4)(h) with the following language:

“5. If application contains requests for waiver of any or all of KRS 160.345, evidence of the two votes required in KRS 160.107(4)(b) for each school requesting such a waiver.”

Page 6

Section 3(4)

Line 13

Delete: “and”.

Page 6

Section 3(4)

Line 14

After “professional learning”, delete “.”.

Insert: “;and”.

Page 6
Section 3(4)
Lines 15-18

Add a new sub-section “m” to Section 3(4) with the following:

“(m) For each school in the plan that is requesting a waiver of the school council structure outlined in KRS 160.345, a description of the governance model to be used in the school. The new governance model shall ensure that teachers, parents, and staff continue to share leadership responsibilities as outlined in KRS 160.107(4)(d).”

Page 7
Section 3(7)
Lines 10-11

After “Department”, delete the following:
“of Education”.

Page 7
Section 3(7)
Lines 11-14

Insert the following:

“The amendment request shall contain the justification for the request and include all appropriate evidence that any amendment affecting an individual school of innovation was voted on in a manner similar to that in subsection 4(h) of this Section of this administrative regulation.”

Page 7
Section 3(7)
Line 15

After “this”, insert the following:

“Section of this administrative regulation”.

Delete: “section”.

Page 7
Section 4(2)(a)
Line 23

After “gender”, insert: “₁”.

Delete: “and”.

After “disability”, insert: “₂”.

Page 8
Section 4(2)(b)
Line 2

After "gender", insert: "₁".
Delete: "and".
After "disability", insert: "₁".

Page 8
Section 4(3)
Line 16

After "Department", delete the following:
"of Education".

Page 8
Section 4(3)(a)
Line 19

After "Department", delete the following:
"of Education".

Page 8
Section 4(3)(a)
Line 21

After "posted on the", insert: "Department's".
Delete the following:
"Department of Education".

Page 9
Section 4(3)(b)
Line 1

After "Department", delete the following:
"of Education".

1 **Education and Workforce Development Cabinet**

2 **Kentucky Board of Education**

3 **Department of Education**

4 **(Amended after comments)**

5 **701 KAR 5:140. Districts of Innovation.**

6 RELATES TO: KRS 156.108, 156.160(1)(g), 160.107

7 STATUTORY AUTHORITY: KRS 156.108, 156.160

8 NECESSITY, FUNCTION, AND CONFORMITY: 156.160(1)(g) gives the Kentucky Board of
9 Education the authority to promulgate administrative regulations and KRS 156.108 requires the
10 Kentucky Board of Education to promulgate administrative regulations to prescribe the
11 conditions and procedures to be used by a local board of education to be approved as a district of
12 innovation by the Kentucky Board of Education. This administrative regulation establishes the
13 requirements and approval process for districts of innovation.

14 Section 1. Definitions. (1) “Competency based learning” means a framework for the awarding of
15 credit to students upon mastery of Kentucky’s Core Academic Standards in 704 KAR 3:303; any
16 additional competencies also include explicit, measurable, transferable learning objectives that
17 empower students; students receive timely, differentiated support based on their individual
18 learning needs; and learning outcomes emphasize competencies that include application and
19 creation of knowledge along with the development of important skills and dispositions.

1 (2) "District of Innovation" is defined in KRS 156.108.

2 (3) "Eligible employees" is defined in KRS 160.107(3)(b).

3 (4) "Expanded Learning Opportunities" means initiatives that provide students additional
4 opportunities for enrichment, personal growth, and engagement outside the traditional school
5 day, and that may include extended day/year initiatives, before- and after-school programs,
6 Saturday, weekend, and summer programs, distance learning, and early childhood education
7 initiatives.

8 (5) "Innovation" is defined in KRS 156.108.

9 (6) "Innovative strategies" mean strategies that provide non-traditional approaches to all areas of
10 curriculum, instruction, assessment, governance, and school operation.

11 (7) "School of Innovation" is defined in KRS 156.108.

12 Section 2. Conditions and areas of emphasis for innovation.

13 (1) Any public school district may submit an application for approval as a district of innovation.

14 No individual school may submit an application except as part of a district application.

15 ~~[(2) A district may include in its application a request for waiver from any administrative
16 regulation promulgated by the Board of Education or any Kentucky Revised Statute related to
17 public schools except the following:~~

18 ~~(a) Any health, safety, civil rights or disability rights requirements in statute or administrative
19 regulation;~~

20 ~~(b) The compulsory attendance requirements under KRS 158.030 and 158.100;~~

21 ~~(c) The Kentucky Core Academic Standards outlined in KRS 158.685 and 704 KAR 3:303;~~

22 ~~(d) The minimum high school graduation requirements set forth in 704 KAR 3:305;~~

23 ~~(e) The statewide assessment system requirements specified in KRS 158.6453;~~

- 1 ~~(f) The financial audit, audit procedures, and audit requirements under KRS 156.265;~~
2 ~~(g) The criminal background check requirements specified in KRS 160.180 and 161.148;~~
3 ~~(h) The open records and meetings requirements in KRS Chapter 61;~~
4 ~~(i) The purchasing requirements and limitations in KRS Chapter 45A, 156.074 and 156.480; or~~
5 ~~(j) The instructional time requirements in KRS 158.070. A district may include in its application~~
6 ~~a request to implement competency based learning strategies that measure a student's mastery of~~
7 ~~the curriculum standards, regardless of the amount of instructional time completed.]~~
8 **(2)[(3)]** A district may incorporate in its application any innovative strategies and models that
9 have been shown to be effective in other districts or states or new innovative strategies or models
10 created by the district or school. Innovative strategies may include:
11 (a) Moving to a competency based learning system, including development of alternate methods
12 for delivering curriculum and for measuring mastery of standards and skills;
13 (b) Creating multiple pathways to graduation, including rigorous career and technical pathways,
14 apprenticeships, early college high schools, early graduation options, and digital learning
15 opportunities;
16 (c) Rethinking the times and places that learning occurs, including lengthening or flexing the
17 school day and school year, moving learning beyond the traditional school building, and
18 incorporating expanded learning opportunities;
19 (d) Implementing alternative forms of school governance that include the engagement of
20 teachers, parents, and community members that do not meet the requirements of KRS 160.345;
21 (e) Designing learning environments that include the student in the design of learning pathways;
22 and

1 (f) Creating additional job classifications for certified and classified staff beyond the traditional
2 roles of teacher and instructional assistants and compensating staff on schedules other than single
3 salary schedules.

4 Section 3. Application process. (1) A district may submit an original or renewal application to
5 the Department at any time within the calendar year. **All implementations of approved**
6 **applications shall begin at the start of a school term and** [~~provided the implementation date~~
7 ~~is~~] at least 180 days from the date of submission of the application.

8 (2) Pursuant to KRS 160.107, a district shall identify and include in its application those schools
9 that have voluntarily chosen to be schools of innovation, any persistently low-achieving schools
10 that the district **chooses to make** [~~is requiring to be~~] schools of innovation, and any district
11 operated schools the district plans to create in its application.

12 (3) The Department shall provide technical assistance to districts prior to application submission.

13 (4) The application shall include the following components:

14 (a) An individual school level plan for each school included in the district's innovation plan and
15 for any district-operated school the district plans to create under the application;

16 (b) A description of how the district's innovation plan shall provide greater improvement in
17 student outcomes, particularly among low-achieving students, than the outcomes the district
18 would expect using its existing instructional programs. The plan shall specifically address how it
19 more effectively improves the multiple measures required under the accountability system,
20 including targets for student achievement, student growth, achievement gap reduction,
21 graduation rate, and college and career readiness;

- 1 (c) A description of the district's plan to ensure that capacity exists in both human and fiscal
2 resources to implement the changes needed in the district to ensure a successful implementation
3 of the district's innovation plan;
- 4 (d) A description of the district's attendance policy for non-traditional settings and the district's
5 plan to ensure that all students meet attendance requirements;
- 6 (e) A plan for developing alternate assessment options and measuring student performance
7 outcomes in non-traditional settings including extended learning opportunities, apprenticeships,
8 private instruction, work-study, study in a foreign country, awarding of competency based
9 learning credit, community service, independent study, and on-line learning opportunities;
- 10 (f) A description and rationale for the innovation strategies and models chosen to be
11 implemented;
- 12 (g) A list of the statutes, administrative regulations and local board policies from which the local
13 district is seeking a waiver or exemption in order to implement innovative practices and an
14 explanation of how the requirements of those authorities are a barrier to that implementation;
- 15 (h) Documentation of broad support for innovations including educators, parents, local
16 institutions of higher education, and business and community partners. This documentation **shall**
17 [~~may~~] include:
- 18 1. Minutes of local board of education meetings where the District of Innovation application was
19 discussed;
 - 20 2. Transcripts or minutes from stakeholder meetings designed specifically to develop or support
21 the District of Innovation application;

1 3. Minutes of school-based decision making (SBDM) councils that include information showing
2 an affirmative vote of at least seventy percent (70%) of the eligible employees to participate in
3 the application as well as discussion of the application itself; [~~and~~]

4 4. Letters of support and commitment to adhere to the innovation plan from a variety of local
5 stakeholder groups including parent, community, and business groups; and

6 **5. If the application contains requests for waiver of any or all of KRS 160.345, evidence of**
7 **the two votes required in KRS 160.107(4)(b) for each school requesting such a waiver.**

8 (i) A detailed budget indicating how the local board of education shall support implementation of
9 the innovation plan over the course of the initial five-year innovation period;

10 (j) Signatures of the superintendent and board chair along with official board minutes
11 documenting a vote to approve submission of the application;

12 (k) Signatures of the chair of the SBDM council for each school participating in the application;
13 [~~and~~]

14 (l) A description of how the district shall support job-embedded professional learning[~~;~~]; and

15 **(m) For each school in the plan that is requesting a waiver of the school council structure**
16 **outlined in KRS 160.345, a description of the governance model to be used in the school.**
17 **The new governance model shall ensure that teachers, parents, and staff continue to share**
18 **leadership responsibilities as outlined in KRS 160.107(4)(d).**

19 (5) A committee designated by the Commissioner shall review and recommend approval or
20 denial of a completed application to the Kentucky Board of Education within sixty (60) days
21 from receipt of the completed application. An incomplete or denied application shall be returned
22 to the district and, if re-submitted, the committee shall review and recommend approval or denial

1 to the Kentucky Board of Education within sixty (60) days of receipt of the re-submitted
2 application.

3 (6) The Kentucky Board of Education shall make the final decision on approval or denial of the
4 application at its first regularly scheduled meeting following the sixty (60) day review period. A
5 successful application shall be given an initial approval for five (5) years. A district that is
6 approved and whose application is still active after five (5) years may submit a renewal
7 application using the application process outlined in this regulation. Each renewal of a district of
8 innovation shall not exceed five (5) years.

9 (7) A district approved as a District of Innovation may amend its plan as needed at any time after
10 the first full year of implementation using a process established by the Department [of

11 Education]. **The amendment request shall contain the justification for the request and**
12 **include all appropriate evidence that any amendment affecting an individual school of**
13 **innovation was voted on in a manner similar to that in subsection 4(h) of this Section of this**

14 **administrative regulation.** The amended plan shall be referred to the committee described in
15 this **Section of this administrative regulation** [section].

16 Section 4. Monitoring of plan implementation. (1) District and school innovation plans shall be
17 incorporated within the overall district comprehensive plan or shall replace the district
18 comprehensive plan.

19 (2) At the completion of the second year after plan approval and each year thereafter for the term
20 of the approval status, a district approved as a District of Innovation shall annually provide data
21 to the Commissioner that shall include the following:

22 (a) Number of students served by the innovation plan, total number and by socio-economic
23 status, race/ethnicity, gender, [and] disability, and grade level;

- 1 (b) Number of students served by the innovation plan not on track to graduate from high school,
2 total number and by socio-economic status, race/ethnicity, gender, ~~and~~ disability, and grade
3 level;
- 4 (c) Documentation of student progress toward graduation and college and career readiness;
- 5 (d) Total number of certified teachers participating in the innovation plan and their roles and
6 responsibilities;
- 7 (e) Documentation of certified and classified staff operating in a non-traditional school
8 environment;
- 9 (f) Documentation of any extended learning opportunities in which students in the innovation
10 school participate for the purposes of earning or recovering credit, including qualifications of
11 instructors, time spent, and student outcomes; and
- 12 (g) Other measurable outcomes specific to the district's innovation plan as described in the initial
13 application.
- 14 (3) At the end of the second year after plan approval and each year thereafter for the term of the
15 approval status, a district approved as a District of Innovation shall receive an annual site visit
16 from an review team selected and trained by the Department ~~[of Education]~~. The purpose of the
17 visit shall be to monitor progress and interview staff and students to collect qualitative data on
18 the effect of the innovation plan and for future research needs.
- 19 (a) The Department ~~[of Education]~~ shall develop a rubric to be used by the site visit team to
20 monitor the implementation of the innovation plan. The rubric and interview questions shall be
21 provided to all innovation districts and posted on the Department's ~~[Department of Education]~~
22 website; and

1 (b) The Department [~~of Education~~] shall be responsible for providing training on the use of the
2 rubric to site team members.

3 Section 5. Probation, revocation, and appeal procedures. (1) After its annual review of a
4 district's implementation report and the report of the site visit team, the Kentucky Board of
5 Education may, on the anniversary of the application approval, determine that a district should be
6 placed on probation and shall provide the district with a corrective action plan.

7 (2) Upon the subsequent year's review of the reports, if the Kentucky Board of Education does
8 not believe the district has met the expectations of the corrective action plan, it may revoke a
9 district's approval as a District of Innovation.

10 (3) Upon notification of probation or revocation of District of Innovation status, the Kentucky
11 Board of Education shall give the district thirty (30) days to appeal the decision in writing and
12 shall rule on the appeal at its next regularly scheduled meeting following the submission of the
13 appeal.

14 (4) Any district that has had its status as a District of Innovation revoked must wait one calendar
15 year before re-applying to be a District of Innovation.

16 Section 6. (1) Incorporation by Reference. (1) The following material is incorporated by
17 reference:

18 (a) "Districts of Innovation Application", November, 2012;

19 (b) "Districts of Innovation Application Scoring Rubric", November, 2012.

20 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
21 the Department of Education, Division of Innovation and Partner Engagement, 1st floor, Capital
22 Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

(Date)

Terry Holliday, Ph.D.
Commissioner of Education

(Date)

David Karem, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2012, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 2, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 701 KAR 5:140

Agency Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for districts applying for District of Innovation status.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.108 to prescribe the conditions and procedures to be used by a local board of education to be approved as a District of Innovation.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific guidelines for the conditions, application process, monitoring, evaluating, and consequences for districts applying for district of innovation status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides districts the necessary guidance for submitting an application for District of Innovation status and further provides guidance on how approved applications will be monitored and what consequences occur when an approved district fails to adequately implement its plan.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky are eligible to apply for District of Innovation status.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The administrative regulation will impact districts applying for District of Innovation status by providing necessary guidance for applying and will further affect districts approved as Districts of Innovation by providing guidance on the monitoring and evaluation of approved district applications.

(a) List the actions that each of the regulated entities identified in question (3) will have to take

to comply with this administrative regulation or amendment: School districts approved as Districts of Innovation must follow the guidance for monitoring and evaluation of approved applications as well as honoring any consequences that must be completed for failure to implement their plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the school districts or the agency other than minimal administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The approved Districts of Innovation will be provided flexibility from the requirements of selected administrative regulations, Kentucky Revised Statutes, and local board of education policies for school administrators, teachers, and staff to meet the diverse needs of students.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Minimal administrative cost to promote and manage the application process. Current staff will be used to manage the process.

(b) On a continuing basis: The proposed regulation results in additional costs to the agency to conduct monitoring visits. The cost is estimated at \$5,000 per District of Innovation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency's general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 701 KAR 5:140
Contact Person: Kevin C. Brown
Phone number: 564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The agency and local school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.108.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Minimal effect. The management of the process will be handled by existing staff at the agency. Agency funds will be used for this process.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? \$5,000 per approved district.

(d) How much will it cost to administer this program for subsequent years? Monitoring program will cost approximately \$5,000 per approved district. We anticipate 3-5 new districts each year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-): This administrative regulation doesn't have an expenditure impact on local school districts. The expenditure impact on the agency is the cost of monitoring the implementation of District of Innovation plans and this impact should be addressed by the re-allocation of existing funds to cover these costs.

Other Explanation:

Summary Page - Incorporation by Reference

701 KAR 5:140. Districts of Innovation.

(1) The following documents are incorporated by reference:

- (a) "Districts of Innovation Application", November, 2012;
- (b) "Districts of Innovation Application Scoring Rubric", November, 2012.

(2) This document serves to provide guidance to local school districts about the conditions that need to be present for awarding District of Innovation status, the process for applying for District of Innovation status, and the subsequent processes for monitoring and evaluating the approved applications and consequences should a district fail to properly implement the plan in its approved application.

(3) The documents incorporated by reference consist of fourteen (14) pages.