

## **KENTUCKY DEPARTMENT OF EDUCATION**

### **STAFF NOTE**

#### **Action/Discussion Item:**

Request from the McCracken County Board of Education for a Waiver of 704 KAR 3:285, Programs for the Gifted and Talented, Specifically Section 9 (1)

#### **Applicable Statute or Regulation:**

KRS 157.196, 157.200 (1) (n), KRS 157.224, KRS 157.230, KRS 161.052 (EPSB), 16 KAR 2:110 (EPSB), 704 KAR 3:285

#### **Action Question:**

Should the Kentucky Board of Education (KBE) grant the McCracken County Board of Education's request for a waiver of 704 KAR 3:285, Programs for the Gifted and Talented, Section 9 (1), requiring that 75% of the district's gifted education allocation be used to employ Gifted/Talented certified personnel to provide direct instructional services?

#### **History/Background:**

**Existing Policy.** The McCracken County Board of Education has requested a waiver from Section 9 of 704 KAR 3:285. McCracken County would like to use the entire \$58,036 allocated to the district for Gifted/Talented Educational Services be spent directly on the students in the form of STEM activities, field trip opportunities, workshops, special instructors, and other related gifted/talented instructional opportunities instead of spending seventy-five percent of those funds to employ a properly certified person. Section 9 (1) states the state funds for gifted education shall be used specifically to provide direct services to students who are gifted and talented. (See attached information from the school district to support this request.)

An outline of relevant statutes and regulations related to section 9 is provided below, including the specific requirement requested to be waived (in bold):

704 KAR 3:285 states:

*"Section 9. Budget. Funding. (1) State funds for gifted education shall be used specifically for direct services to students who are gifted and talented. Direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel as required by the Education Professional Standards Board in 704 KAR 20:280. **Seventy-five (75) percent of a district's gifted education allocation shall be used to employ properly certified personnel to provide direct instructional services.***

*(2) A local district budget decision impacting state funds for gifted education after the annual submission of the local district education plan shall be coordinated through the district gifted education coordinator. If the change will cause a major or significant adjustment to the district*

*gifted education budget, the change shall be submitted to the Kentucky Department of Education for approval as an amendment.*

*(3) A district receiving state gifted education funding shall designate a gifted education coordinator to:*

- (a) Oversee the district gifted education operation;*
  - (b) Serve as liaison between the district and the state;*
  - (c) Ensure internal compliance with state statutes and administrative regulations; and*
  - (d) Administer and revise the gifted education program budget.*
- (4) State funding to a district shall be contingent upon:*
- (a) Employing properly certified personnel to administer and teach in the program;*
  - (b) The annual submission of a local district gifted education year-end report;*
  - (c) A summative evaluation of the program and student progress; and*
  - (d) Complying with this administrative regulation.”*

KRS 157.196 requires:

*“Each exceptional student as defined in KRS 157.200 shall have an individual education plan that shall serve as the centerpiece of the student's educational career and the communication vehicle between the parents and school personnel. The plan shall enable the parents and school personnel to decide the student's educational needs, the services needed to achieve those needs, and the anticipated results. The plan shall be used as a document to monitor the student's progress. School personnel shall provide the parents with reports of the progress toward the student's annual goals at least as often as report cards go to nondisabled students.”*

KRS 157.224 requires:

*“All county and independent boards of education shall operate special education programs pursuant to an annual application which has been approved by the Kentucky Department of Education pursuant to standards set out in administrative regulations promulgated by the Kentucky Board of Education.”*

KRS 161.052 requires:

*“That all persons employed as a teacher for gifted education hold an appropriate certificate endorsement for gifted education.”*

16 KAR 2:110 establishes:

*“A preparation-certification program for teachers for gifted education” and defines a teacher of gifted as “a teacher who works:*

- (a) Directly with identified gifted pupils, in addition to the regularly assigned classroom teacher;*
- or*
- (b) For at least one-half (1/2) of the regular school day in a classroom made up only of properly identified gifted students”.*

In addition, 704 KAR 3:285 establishes in Section 8 (2) that:

*“All other personnel working with gifted students shall be prepared through appropriate professional development to address the individual needs, interests, and abilities of the students”.*

The KBE does not have the statutory authority to waive the requirements of the statutes of the General Assembly or the regulations promulgated by the Education Professional Standards Board. However, the KBE can waive the requirement in Section 9 (1) that states that “seventy-five (75) percent of a district’s gifted education allocation shall be used to employ properly certified personnel to provide direct instructional services.”

**Staff Recommendation(s) and Rationale(s):**

Staff recommend that the KBE approve the request to waive the district requirement to spend seventy-five (75) percent of a district’s gifted education allocation to employ properly certified personnel to provide direct instructional services and allow McCracken County to spend its entire gifted and talented allocation to provide services to gifted and talented students through the multiple service delivery options outlined in Section 6 (5) of 704 KAR 3:285. Continued approval of this waiver should be contingent upon the district using one hundred percent of its gifted and talented funds for services to those students properly identified as gifted and talented. McCracken County shall monitor the use of these funds and report to the Kentucky Department of Education in the annual report required by 704 KAR 3:285 how the funds are being used for services to properly identified gifted and talented students.

*“There shall be multiple service delivery options with no single service option existing alone, districtwide, at a grade level. These service delivery options shall be differentiated to a degree as to be consistent with KRS 157.200(1). Both grouping for instructional purposes and multiple service delivery options may include:*

- (a) Various acceleration options (e.g., early exit from primary, grade skipping, content and curriculum in one (1) or more subjects from a higher grade level);*
- (b) Advanced placement and honors courses;*
- (c) Collaborative teaching and consultation services;*
- (d) Special counseling services;*
- (e) Differentiated study experiences for individuals and cluster groups in the regular classroom;*
- (f) Distance learning;*
- (g) Enrichment services during the school day (not extracurricular);*
- (h) Independent study;*
- (i) Mentorships;*
- (j) Resource services delivered in a pull-out classroom or other appropriate instructional setting;*
- (k) Seminars;*
- (l) Travel study options; or*
- (m) Special schools or self-contained classrooms, grades four (4) through twelve (12) only”.*

The district shall then use their general fund dollars to employ the properly certified staff to provide direct services to gifted and talented students as appropriate for the service delivery options implemented in the district.

This is the second waiver request the KBE has received for this specific portion of Section 9 (1) and this points out a larger issue related to the services provided to gifted and talented students. The allocation for gifted and talented students has remained the same over many years. Therefore, the requirement to spend seventy-five (75) percent of district funds on a staff person certified in gifted and talented education is

difficult for many districts due to the small allocation they receive. Thus, KDE staff recommend that the department review 704 KAR 3:285 with input from stakeholders and bring recommendations for revision, especially to this specific portion of Section 9 (1) to the KBE before the end of this school year.

If approved, KDE staff will work closely with the two districts who have received this waiver to support best practices for gifted and talented students in these districts and will continue to share best practices related to gifted and talented instruction with all Kentucky districts.

**Impact on Getting to Proficiency:**

The McCracken County Board of Education proposes using 100% of its gifted and talented funds to provide services to students. Services provided to gifted and talented students help them to make continuous progress toward their goals.

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**Interim Commissioner of Education**

**Date:**

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