

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

704 KAR 7:051, Repeal of 704 KAR 7:050, Student Discipline Guidelines (*Second Reading*)

Commissioner's Recommendation:

The Commissioner recommends repeal of this regulation.

Rationale:

To eliminate inefficiency. The statute was amended no longer requiring the Kentucky Department of Education to approve local district discipline codes. This left only an incorporation by reference to the "Student Discipline Guidelines, April 2003." As KRS 158.148 provides, the Student Discipline Guidelines must be reviewed every two years or as needed. It is inefficient to house the Student Discipline Guidelines in regulation as any change will require an update to the regulation. The first reading of this regulation occurred at the December 2016 meeting.

Action Question:

Should the Kentucky Board of Education (KBE) approve 704 KAR 7:051 to repeal 704 KAR 7:050?

Applicable Statute or Regulation:

KRS 158.148, KRS 158.150, 704 KAR 7:050

History/Background:

Existing Policy: In 1984, KRS 158.148 originally required the Kentucky Department of Education (KDE) to review and approve each school district's student discipline code. 704 KAR 7:050 was originally promulgated to outline the process and requirements for KDE approval of local student discipline codes. Amendments to KRS 158.148, however, now only require KDE, in collaboration and cooperation with various other agencies and organizations, to "develop or update as needed and distribute to all districts by August 31 of each even-numbered year, beginning August 31, 2008: (a) Statewide student discipline guidelines ..." Since the criteria for KDE to review, revise, and distribute the student discipline guidelines is contained in KRS 158.148, there is no longer any need for an administrative regulation on this topic.

Summary: 704 KAR 7:050 currently incorporates by reference "Student Discipline Guidelines, April 2003." As indicated above, there is no longer any need for an administrative regulation on this topic. Furthermore, any attempt to revisit and update this

document currently requires revision of the regulation. Statute requires that KDE update the discipline guidelines as needed at least every two years. Repeal of this regulation eliminates inefficiency and confusion on this topic. Discipline guidelines will continue to come before the KBE and Local Superintendents Advisory Council (LSAC) for review.

Budget Impact: No impact occurs to state funds due to the repeal of the regulation.

Groups Consulted and Brief Summary of Responses:

The Local Superintendent Advisory Council (LSAC) received this recommendation to repeal 704 KAR 7:050 at its November 29, 2016 meeting and voted in support of repeal. The recommendation to repeal was reviewed again on May 30 and LSAC will present a letter to the board with its recommendation.

KDE also received input from the Office of Education Accountability (OEA) noting that repeal of this regulation may result in noncompliance with KRS 158.444 which states that “[t]he Kentucky Board of Education shall promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters.”

KDE does not agree with OEA’s concern regarding potential noncompliance with KRS 158.444. First, 704 KAR 7:160, Use of Restraint and Seclusion in Public Schools, was partially promulgated under KRS 158.444’s authority, thereby making the specific concern OEA presented, the lack of any regulation promulgated under KRS 158.444, a non-issue since at least one regulation will be in place under that authority. Secondly, it is not entirely uncommon for the KBE to opt not to promulgate regulations despite specific authority to do so being provided in statute. Furthermore, it is important to note that 704 KAR 7:050 does not list KRS 158.444 specifically as authority. Finally, KRS 158.148 specifically states that KDE, not the KBE, shall create and update the guidelines, indicating that this is a process intended for nonbinding guidance, not regulation.

Contact Person:

Kelly Foster
Associate Commissioner
Office of Continuous Improvement and Support
(502) 564-5130
kelly.foster@education.ky.gov



Commissioner of Education

Date:

June 2017