

**STATEMENT OF CONSIDERATION
RELATING TO 701 KAR 5:140
Districts of innovation.**

**Kentucky Board of Education
Department of Education**

Not Amended After Comments

1. A public hearing was scheduled on the above regulation for September 25, 2018 at 1:00 p.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky but was canceled when no one registered to attend or attended the hearing.
2. The following individuals submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Lucy M. Heskins	Attorney Supervisor, Kentucky Protection and Advocacy

3. The following people from the promulgating administrative body responded to written comments:

<u>Name and Title</u>
Dr. Kelly Foster, Associate Commissioner, Office of Continuous Improvement and Support
Deanna Durrett, General Counsel, Office of Legal, Legislative and Communication Services
Todd Allen, Deputy General Counsel, Office of Legal, Legislative and Communication Services
Whitney A. Crowe, Executive Advisor, Office of Continuous Improvement and Support

Summary of Comments and Responses

- (1) Subject Matter: District of Innovation Application Timelines.
 - (a) Comment: Commenter requests the regulatory timeline for the Kentucky Department of Education (KDE) to review an original or renewal District of Innovation Application be restored to a minimum of 180 days and not be reduced to 90 days as has been proposed in this amended administrative regulation. Specifically, the commenter has proposed the following revision be made in Section 3(1) of the regulation: “A district may submit an original or renewal District of Innovation Application to the Kentucky Department of Education at any time within the calendar year. Each implementation of an approved application shall begin at the start of a school term, and a district shall submit an application at least one hundred and eighty (180) [~~ninety (90)~~] days prior

to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term.”

Additionally, the commenter proposes Section 3(5) of the regulation state: “A committee designated by the Commissioner of Education shall review and recommend approval or denial of a completed application to the Kentucky Board of Education within sixty (60) [~~forty-five (45)~~] days from receipt of the completed application based on use of the District of Innovation Application Scoring Rubric.”

(b) Response: The agency carefully reviewed these comments.

701 KAR 5:140 was first promulgated by the Kentucky Board of Education (KBE) in 2013 to fulfill its requirements under KRS 156.108(3), which directs the KBE to “prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation.” In addition, KRS 156.108(4)(b) requires the regulation specify, among other things, the application process for a prospective District of Innovation. The establishment of District of Innovation application timelines is clearly within the regulatory authority of the KBE as such timelines are one component of the procedures a school district would follow in seeking approval from the KBE to be a District of Innovation.

In addition to having the legal authority to create timelines that govern when a District of Innovation application must be received and how quickly received applications must be processed, the KBE is also uniquely qualified to establish such timelines based on prior experience in administering the District of Innovation program. The first Districts of Innovation were approved by the KBE for the 2013-2014 school year and, since that time, a total of ten Districts of Innovation have been approved by the KBE. In the five years since the creation of Districts of Innovation, the KBE as well as staff at the Kentucky Department of Education (KDE) have learned a tremendous amount through the administration of this program and have been able, during this timeframe, to identify areas for continuous improvement, including ways to streamline the District of Innovation application process. The reduced timelines in the regulation for a district to submit a District of Innovation application for consideration by the KBE, namely 90 days prior to the beginning of a school term under the amended regulation, and for the review of completed District of Innovation applications, which the amended regulation reduces from 60 days down to 45 days following receipt, are reflective of the KBE’s improved efficiencies developed over several years administering the District of Innovation program and are not expected to negatively impact the KBE’s ability to thoroughly review District of Innovation applications.

It is also important to note that, regarding the timeline by which a District of Innovation application must be received by the KBE, the amended regulation requires that a District of Innovation application be submitted *at least* 90 days prior to the beginning of a school term. As written, this timeline establishes the minimum timeframe that a district submitting a District of Innovation application must comply with in order to receive consideration for approval by the KBE. In other words, all applications received by the deadline established in the amended regulation will be evaluated using the District of Innovation Scoring Rubric incorporated by reference in the regulation, which is designed to ensure the KBE has the information it needs to approve or deny a District of Innovation application. The reduction of the minimum timeline for District of

Innovation application submission would not, however, prevent a district from submitting its District of Innovation application well in advance of the deadline. In fact, Section 3(1) of the regulation begins with the following statement, “A district may submit an original or renewal District of Innovation Application to the Kentucky Department of Education *at any time* within the calendar year.” (emphasis added) A district submitting a District of Innovation application, particularly an original rather than renewal application, would be advised to consider submitting such to the KBE well in advance of the minimum 90 day threshold.

As a final point of clarification, while 701 KAR 5:140 does require an approved District of Innovation application to be implemented “at the beginning of a school term,” neither the regulation nor the governing statutes require an approved District of Innovation application be implemented at the start of the *next* school year. A district with an approved District of Innovation application will not be encouraged much less required to immediately implement such innovation plan if the district does not believe it has sufficient time following approval by the KBE to do so.

No amendments have been made in response to these comments.

(2) Subject Matter: Components of the District of Innovation Application.

(a) Comment: Commenter requests additional District of Innovation Application requirements be left in the amended regulation. Specifically, the commenter proposes the language in Section 3(4)(b)-(c) be restored in the regulation.

(b) Response: The agency carefully considered these comments.

Pursuant to KRS 156.108(3), the KBE promulgated 701 KAR 5:140 to “prescribe the conditions and procedures to be used by a local board of education to be approved as a district of innovation.” In addition, KRS 156.108(4)(b) requires the regulation specify, among other things, the application process for a prospective District of Innovation. Finally, KRS 160.10(1)(g) mandates District of Innovation applicants “[p]rovide other materials as required by the Kentucky Department of Education in compliance with the state board’s administrative regulations and application procedures.” Based on the authorizing statutes, it is within the purview of the KBE to determine, within the confines of KRS 156.108 and KRS 160.107, what components of the District of Innovation application are and are not necessary.

With regard to the particular language the amended regulation deletes in Section 3(4)(b)-(c), those components are already covered, in substantial part, by the mandates within KRS 160.107 as well as the remaining application requirements in 701 KAR 5:140, including the District of Innovation Application that is incorporated by reference within the regulation. For example, Section 3(4)(b) previously required District of Innovation applications to include a “description of how the district’s innovation will provide greater improvement in student outcomes” and “specifically address how it more effectively improves the multiple measures required under the accountability system....” 701 KAR 5:140, Section 3(4) now states, “In addition to the application requirements established in KRS 160.107(1), the application shall include....” Regarding the requirements in KRS 160.107(1), subsection (1)(c) of the statute requires applicants describe and justify the innovation practices proposed and subsection (1)(a) of the statute requires applicants “[e]stablish

goals and targets for the district of innovation proposal.” Further, 701 KAR 5:140, Section 3(4)(d), as amended, states that an application shall include “[a] description of expected gains in student learning as a result of implementing these strategies, including a description of how improved student learning will be measured and reported.”

In reference to Section 3(4)(c), regulatory language previously mandated a District of Innovation application include “[a] description of the district’s plan to ensure that capacity exists in both human and fiscal resources to implement the changes needed in the district to ensure a successful implementation of the district’s innovation plan.” As amended, the regulation no longer includes this language because such is already prescribed in statute. Specifically, KRS 160.107(1)(f) already requires applicants to “[d]ocument the fiscal and human resources the board will provide throughout the term of the implementation of the innovations within its plan.” Because existing statutory language requires District of Innovation applications to address the availability and allocation of resources, there is no need to duplicatively require such within the amended administrative regulation.

No amendments have been made in response to these comments.

(3) Subject Matter: District of Innovation Site Visits.

(a) Comment: Commenter requests the addition of the following underlined language in Section 5(1): After its annual review of a district’s implementation report and the report of the site visit team, the Kentucky Board of Education may determine that a district’s status as a District of Innovation shall be placed on probation or revoked.”

(b) Response: The agency carefully considered these comments.

Additional language in Section 5 of the amended regulation properly addresses these comments by ensuring that a District of Innovation will receive a site visit prior to being placed on probation or having its District of Innovation status revoked by the KBE. Specifically, Section 5(3) of the amended regulation states:

Prior to having its status as a District of Innovation placed on probation or revoked, a district shall receive a site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor the district’s progress in implementing the innovation plan, collect qualitative data on the effectiveness of the innovation plan, and verify the district’s compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through: (a) Direct observation; (b) Interviews with staff and students; or (c) Examination of records.

Further, under the amended regulation, site visits are not necessarily limited to instances where the KBE is considering probation or revocation and, instead, may occur at other times during a District of Innovation’s term of approval. Although language was deleted from Section 4 of the amended

regulation that previously mandated site visits of Districts of Innovation occur at the end of the second year after plan approval and each year thereafter, the removal of such language does not prohibit site visits from occurring.

The mechanisms included within the amended regulation, including optional site visits as well as various data reporting requirements, are sufficient to ensure the KBE has a full and clear understanding of innovation plan implementation when engaging in routine District of Innovation oversight and when contemplating taking probation or revocation action against a District of Innovation.

No amendments have been made in response to these comments.

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

The public hearing on this administrative regulation was canceled; however, written comments were received related to (1) District of Innovation application timelines, (2) components of the District of Innovation application, and (3) District of Innovation site visits. The agency declined to make amendments to the regulation as proposed by written comments received.