

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Seizure Action Plan Regulation Amendment (Second Reading)

Date: February 6, 2019

Action Requested: Review Action/Consent Action/Discussion

SUMMARY OF ISSUE BEFORE THE BOARD:

To amend 702 KAR 1:160 (Second Reading).

APPLICABLE STATUTE OR REGULATION:

KRS 156.070, 156.160(1), and 158.838

BACKGROUND:

Existing Policy: 702 KAR 1:160 pertains to school health services and covers a variety of topics including medical examinations of school employees; medical, dental and vision examinations of students; administration of certain medications; required student health records; and required district health personnel. The regulation currently requires that at all times when students are present in a school building there is a trained school employee present that can administer seizure rescue medications. This is consistent with the law prior to the passage of HB 147 (2018). During the last session of the General Assembly, it enacted HB 147 which requires schools to adopt policies related to student seizure action plans.

Summary: HB 147 passed during the 2018 General Assembly and codified at KRS 158.838 requires the Kentucky Board of Education to promulgate regulations establishing procedures for the implementation of seizure action plans. A “seizure action plan” is a written, individualized health plan designed to acknowledge and prepare for the health care needs of a student diagnosed with a seizure disorder that is prepared by the student’s treating physician. (KRS 158.832(5)). This amendment to 702 KAR 1:160 requires local boards of education to adopt policies for the implementation of individualized seizure action plans. It requires school personnel trained in the implementation of a student’s individualized seizure action plans be present during school hours or when students are participating in school-related activities.

Budget Impact: There is no budget impact to the Kentucky Department of Education (KDE). Pursuant to the HB 147, Districts are required to provide one hour of self-study review of seizure disorder materials for all principals, guidance counselors, and teachers. Districts will incur some unknown cost related to this training.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

KDE staff presented the proposed amended regulation to the Local Superintendent’s Advisory Council (LSAC) at the November 27, 2018 meeting. LSAC members had no issues with the amendment. The Kentucky School Boards Association (KSBA) also reviewed the proposed amendment and found no issues with the proposed changes.

The Office of Education Accountability (OEA) reviewed the proposed regulation amendment and provided the following comments:

1. KRS 158.838 requires KBE to promulgate administrative regulations establishing procedures for the implementation of seizure action plans. The proposed regulation, as presently written, states that local boards of education shall adopt a program of continuous health supervision, which shall include the adoption of policies for the implementation of seizure action plans. This appears rather stark, as the proposed regulation does not address the manner in which they should be adopted or how they should be initiated.
2. Page 6, line 8 of this proposed regulation states that districts are required to have school employees available to administer or assist with the administration of seizure rescue medications pursuant to a student's seizure action plan during school hours or school-related activities. It does not seem to address the possibility that some students may not have seizure rescue medications included in their seizure action plans, but require some other form of treatment. The proposed regulation may wish to consider the possibility that some seizure action plans do not require seizure rescue medications, but still may require a trained school employee to be present during school hours or during school-related activities.

KDE staff reviewed and considered the OEA comments but have determined that no changes to the proposed regulation are necessary. KDE staff provide the following response to the OEA comments:

1. It is intended that the local board adopt a policy for the implementation of seizure action plans in the same manner as the local board adopts other policies. Per the Kentucky School Boards Association (KSBA) webpage, "the adoption of local school district policy is one of the key responsibilities of the board of education." KSBA's webpage further explains, "[p]olicy is a board's broad statement of direction that sets a course of action and provides guidance for students, district employees, community members, and the board itself. State and federal laws often require boards to adopt written policies. Bottom line, policies are invaluable for setting direction and providing oversight on behalf of the community." (<https://www.ksba.org/Whatarepolicies.aspx>). Some examples in law where boards are required to adopt policies are KRS 160.340 which requires the generation of reports and adoption of various policies, and KRS 160.345 that requires the adoption of a policy implementing school-based decision making.

Additionally, the proposed regulation amendment requires local boards to adopt seizure action policies but is largely silent or "stark" as to their content; this is because the statutes are specific about the definition and implementation of seizure action plans. KRS 158.832 defines a "seizure action plan" as "a written, individualized health plan designed to acknowledge and prepare for the health care needs of a student diagnosed with a seizure disorder that is prepared by the student's treating physician." KRS 158.838(2)(b) requires the parent or guardian of a student diagnosed with a seizure disorder to "collaborate with school personnel to implement the seizure action plan." The intent of the proposed amendment is to provide the local school district with the

flexibility to create an efficient seizure action plan policy in accordance with the needs of their individual students.

2. The proposed regulation amendment extends the requirement that a person be on duty to administer seizure medication pursuant to a seizure action plan to after school activities. The existing regulation makes similar provisions for diabetic students. It is important to note, that while all school personnel or volunteers that supervise students with seizure action plans will be made aware of the plan, not all are trained to provide health services pursuant to KRS 156.502. As set out below, KRS 156.502 lists the providers that may provide health services in a school setting. The intent of the proposed amendment is that the seizure action plan is the primary source for the course of treatment for a student with seizure disorder. School employees and volunteers that supervise the student shall be aware of the plan and know the health services provider to contact if the student has a seizure. In the school setting, the health services provider will be knowledgeable about the plan and trained on the appropriate steps to take to respond to a seizure. Finally, even though not all school personnel are trained to implement a seizure action plan, all teachers, guidance counselors and principals are required to receive training on seizure disorders and symptoms pursuant to KRS 158.070.

KRS 158.838(3)(b) provides:

Any school personnel or volunteers responsible for the supervision or care of a student diagnosed with a seizure disorder shall be given notice of the seizure action plan, the identity of the school employee or employees trained in accordance with subsection (1)(a) of this section, and the method by which the trained school employee or employees may be contacted in the event of an emergency.

KRS 158.838(1)(a) requires that the local board of education have at least one (1) school employee at each school that has met the requirements of KRS 156.502 on duty during the entire school day to administer or assist with the self-administration of medications including a seizure rescue medication or medication prescribed to treat seizure disorder symptoms approved by the United States Food and Drug Administration and any successor agency.

KRS 158.838(1)(b) requires training for those providers to include seizure medications, as well as the recognition of the signs and symptoms of seizures and the appropriate steps to be taken to respond to these symptoms. Pursuant to KRS 156.502(2), health services may be provided by:

- (a) A physician who is licensed under the provisions of KRS Chapter 311;
- (b) An advanced practice registered nurse, registered nurse, or licensed practical nurse who is licensed under the provisions of KRS Chapter 314;
- (c) A nonlicensed health technician that has the administration of health services in his or her contract or job description as a job responsibility and who is delegated responsibility to perform the health service by a physician, advanced practice registered nurse, or registered nurse and has been trained and approved in writing by the delegating physician or delegating nurse for delegable health services; or


(d) A school employee who is delegated responsibility to perform the health service by a physician, advanced practice registered nurse, or registered nurse; and

1. Has been trained by the delegating physician or delegating nurse for the specific health service, if that health service is one that could be delegated by the physician or nurse within his or her scope of practice; and

2. Has been approved in writing by the delegating physician or delegating nurse. The approval shall state that the school employee consents to perform the health service when the employee does not have the administration of health services in his or her contract or job description as a job responsibility, possesses sufficient training and skills, and has demonstrated competency to safely and effectively perform the health service. The school employee shall acknowledge receipt of training by signing the approval form. A copy of the approval form shall be maintained in the student's record and the personnel file of the school employee. A delegation to a school employee under this paragraph shall be valid only for the current school year.

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Commissioner of Education

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