

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Applications of Waiver of Administrative Regulations from the Bell, Carroll, Graves, Henry, Knott, Owsley, Pulaski and Trimble County School Districts

Date: December 2019

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board Curriculum, Instruction and Assessment
 Finance Operations Management

SUMMARY OF ISSUE BEFORE THE BOARD:

To take action on the Applications of Waiver of Administrative Regulations from the Bell, Carroll, Graves Henry, Knott, Owsley, Pulaski, and Trimble County school districts. The applications request a waiver from 701 KAR 8:020, Section 3 (4) relating to annual training for charter school authorizers in Kentucky. KRS 156.160(2) grants the Kentucky Board of Education (KBE) authority to waive its own regulations at the request of a local school district superintendent and establishes the parameters for doing so.

COMMISSIONER’S RECOMMENDATION:

The Commissioner recommends denial of the districts’ Applications of Waiver of Administrative Regulations, which request waiver of 701 KAR 8:020, Section 3(4).

APPLICABLE STATUTE OR REGULATION:

KRS 156.160(2) and 701 KAR 8:020, Section 3 (4).

BACKGROUND:

Existing Policy:

KRS 156.160(2) states:

“(a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.

(b) The following shall not be subject to waiver:

1. Administrative regulations relating to health and safety;
2. Administrative regulations relating to civil rights;
3. Administrative regulations required by federal law; and
4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.”

Additionally, 701 KAR 8:020, Section 3(4) states: “The authorizer, or its designee for charter authorizing, shall participate in annual in-service training as follows:

(a) Each authorizer or member of the authorizer’s board of directors or governing board of the authorizer shall complete:

1. Twelve (12) hours of annual training for an authorizer or member with zero to eight (8) years of experience as an authorizer and eight (8) hours for an authorizer or a member with more than eight (8) years of experience as an authorizer; or
2. Competency-based annual in-service training;

(b) In-service training toward the board of education member training requirements of KRS 160.180 may also count toward this requirement, to the extent the requirements of both are met by the content of the training, and the training for this requirement shall include the following topics of authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;
2. Conflict of interest;
3. Charter application;
4. Charter school contracting;
5. Charter school monitoring;
6. Charter school renewal, nonrenewal, and revocation;
7. Charter school closure;
8. Ethics;
9. Curriculum and instruction;
10. Educational services provided for special needs, at risk, English learner, gifted, and other special population students; and
11. Physical restraint and seclusion of students; and

(c) The training shall be approved by the commissioner of education.”

Summary of Issue:

(1) Application of Waiver of Administrative Regulations from the Bell County school district:

On September 26, 2019, Bell County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive “701 KAR 8:020 Section 3 (a)1.,” which Kentucky Department of Education (KDE) staff determined was actually a request to waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Bell County states that it does not meet the legal definition of charter school “authorizer,” which is defined in KRS 160.1590(13) to mean “an entity or body that reviews, approves, or denies charter applications, enters into charter contracts with applicants, oversees public charter schools, and renews, does not renew, or revokes charter contracts” and includes, among others, “a local school board of a local school district in which a public charter school is located.” Because there currently are no public charter schools located in Bell County, the district argues that its local board of education is not an “authorizer” and is not bound by 701 KAR 8:020, Section 3 (4).

As additional justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Bell County states, “There has been no individual or group who has voiced interest relative to forming a charter school.” In its Application of Waiver of Administrative Regulations, Bell County also asserts, “Any talk of creating a charter school would not get off the ground in this environment.”

(2) Application of Waiver of Administrative Regulations from the Carroll County school district:

On September 30, 2019, Carroll County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Carroll County states that the regulation is “burdensome to board members;” training required by 701 KAR 8:020, Section 3 (4) “could and should be integrated into existing training requirements” for board members in KRS 160.180 and 702 KAR 1:115; and, training required by 701 KAR 8:020, Section 3 (4) “exceeds the quality content available.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3 (4), the district states, “It is not likely that Carroll County would branch out into charter schools.” In its Application of Waiver of Administrative Regulations, the district also notes its collaboration with four other districts and the Ohio Valley Education Cooperative to create the “I-Lead” academy and asserts, “Each of the 5 boards collaborated to develop and implement the I-Lead Academy without required arduous Charter School training.”

(3) Application of Waiver of Administrative Regulations from the Graves County school district:

On November 15, 2019, Graves County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Graves County states that required training for charter school authorizers “puts a hardship” on board members being able to receive “training that is most applicable to the current governance of the district.” As additional justification for requesting waiver of 701 KAR 8:020, Section 3 (4), the district asserts required charter authorizer training shifts the board’s focus “away from the advancement of student achievement” and from serving “3,960 students in Graves County.”

(4) Application of Waiver of Administrative Regulations from the Henry County school district:

On October 22, 2019, Henry County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Henry County states that the regulation is “burdensome to board members” and training required by 701 KAR 8:020, Section 3 (4) “exceeds the quality content available.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3 (4), the district states, “It is not likely that Henry County would branch out into charter schools.” In its Application of Waiver of Administrative Regulations, the district also notes its collaboration with four other districts and the Ohio Valley Education Cooperative to create the “I-Lead” academy and asserts, “Each of the 5 boards collaborated to develop and implement the I-Lead Academy without required arduous Charter School training.”

(5) Application of Waiver of Administrative Regulations from the Knott County school district:

On October 14, 2019, Knott County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Knott County states that the regulation “has caused hardship...and is hindering the ability of our board to undertake development and training on other topics of great relevance to the governance of our district.” The district also notes that it desires to “focus more...attention on needs and requirements of all our students right now and not be distracted by additional training on something that may never happen in Knott County.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3 (4), the district states, “There is no requirement for members of local school boards to receive training specific

to their role as a charter authorizer through the statute. When the General Assembly enacted the charter school law in 2017, without including such a specific training requirement for authorizers, it is likely because they were aware of the general training board members already receive...under statutes passed by the General Assembly.”

(6) Application of Waiver of Administrative Regulations from the Owsley County school district:

On November 13, 2019, Owsley County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Owsley County states that the regulation “has added a financial burden to the district” in the form of “training registration costs, travel reimbursements and lodging expenses for school board members.” The district also cites a “hardship on local elected school board members due to their time away from jobs and the resulting loss of income” as a reason for requesting waiver of 701 KAR 8:020, Section 3 (4).

As additional justification, the district states that training required for charter school authorizers is not “beneficial” to its school board, which has not received a charter school application, and asserts that requirements in 701 KAR 8:020, Section 3 (4) preempt board members from taking professional development in other subject matters “more valuable to the board member, as well as the school district,” including “Policy and Procedure, School Facilities, Construction/General Contracting, Liability & Insurance Requirements and Media/Community Relations.” According to the district, a lack of diversity in board member training prevents board members from receiving “a well rounded curriculum, thereby impairing their ability to make effective decisions for students and staff,” and precludes the opportunity for board members to advance in the Kentucky School Boards Association (KSBA) Academy of Studies. According to the KSBA website, the Academy of Studies is intended to guide board members “through the information and skills they need to make their jobs less overwhelming and make them, and their board team, more effective.” KSBA also publicly recognizes board members for their progress within its Academy of Studies.

(7) Application of Waiver of Administrative Regulations from the Pulaski County school district:

On October 24, 2019, Pulaski County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Pulaski County states that the regulation “puts a hardship” on board members “receiving training that is most applicable to the current governance of our district” and “lessens...efforts to focus on and advance student achievement.”

As additional justification, the district states that waiver of 701 KAR 8:020, Section 3 (4) will

allow the district to prioritize its “time, effort, and resources in serving...8,500+ students.”

(8) Application of Waiver of Administrative Regulations from the Trimble County school district:

On November 8, 2019, Trimble County submitted the Application of Waiver of Administrative Regulations requesting the KBE waive 701 KAR 8:020, Section 3 (4) pertaining to annual training for charter school authorizers in Kentucky.

As justification for requesting waiver of 701 KAR 8:020, Section 3 (4), Trimble County states that training required for charter school authorizers “exceeds the quality content available” and is “burdensome” to board members since “most...that serve, work full time jobs, have family responsibilities and attend numerous school functions in addition to the monthly board meetings.” The district further asserts that “quality board member whom are well rounded in home and community engagements are very discouraged by the additional requirement” and that “in a small rural community such as Trimble County, it is difficult to find community members that can give this additional amount of time to their already full plates.”

As additional justification for requesting waiver of 701 KAR 8:020, Section 3 (4), the district states, “It is not likely that Trimble County would branch out into charter schools.” In its Application of Waiver of Administrative Regulations, the district also notes its collaboration with four other districts and the Ohio Valley Education Cooperative to create the “I-Lead” academy and asserts, “Each of the 5 districts’ school boards, collaborated to develop and implement the iLEAD Academy without required arduous Charter School training.”

(9) Recommendation to deny the Applications of Waiver of Administrative Regulation:

As an initial matter, there are currently 172 charter school authorizers in the state of Kentucky, including the local boards of education in Bell, Carroll, Graves, Henry, Knott, Owsley, Pulaski, and Trimble counties. As charter school authorizers, these local boards of education are required to adopt and have adopted policies that govern individual authorizer activities. Policy number 01.83 is substantially similar in all eight districts and says, in part, that school board members “shall participate in annual in-service training” meeting the requirements established in 701 KAR 8:020, Section 3 (4). Accordingly, the Bell, Carroll, Graves, Henry, Knott, Owsley, Pulaski, and Trimble County school districts acknowledge in duly adopted board policies that the local board of education in each district is a charter school authorizer pursuant to KRS 160.1590(13) and school board members in each district are required to complete training established in 701 KAR 8:020, Section 3 (4).

Regarding the districts’ Applications of Waiver of Administrative Regulations, it is relevant to consider that, when 701 KAR 8:020, Section 3 (4) was promulgated, the KBE sought to minimize potential hardships to charter schools authorizers in Kentucky by:

1. Mirroring annual training requirements for local board of education members pursuant to KRS 160.180(6), which reduces annual training requirements as years of experience increases;
2. Stating explicitly in 701 KAR 8:020, Section 3 (4)(b), “In-service training toward the board of

education member training requirements of KRS 160.180 may also count toward this requirement, to the extent the requirements of both are met by the content of the training;”

3. Providing an option, pursuant to 701 KAR 8:020, Section 3 (4)(a)2., for charter authorizers to fulfill “competency-based annual in-service training” in lieu of the seat hours required in 701 KAR 8:020, Section 3 (4)1.; and,

4. For the first implementation cycle, granting charter authorizers from March 9, 2018, when 701 KAR 8:020 and the other three charter-related regulations became effective, through December 31, 2019 to complete annual training requirements pursuant to 701 KAR 8:020, Section 3 (4).

In consideration of item 2 above, the KDE implemented 701 KAR 8:020, Section 3 (4) in a way that seeks to maximize the overlap of charter authorizer training and board of education member training. For example, at a recent conference hosted by KSBA, which acts as the designated training provider for local school board members pursuant to 702 KAR 1:115, board members had the opportunity to earn 10.75 hours of training, including 8.75 hours of KDE-approved charter authorizer training. Of 37 total sessions at this specific KSBA conference, 22 appeared to count concurrently for both board member training and charter authorizer training.

Also, with regards to item 4. above, as of early October, nearly 60% of board members, including 32 of the 40 local board members in the eight districts applying for waiver of 701 KAR 8:020, Section 3 (4), had met or exceeded the requirements of 701 KAR 8:020, Section 3 (4). Of those that had not met the requirements of 701 KAR 8:020, Section 3 (4), the vast majority only needed a few additional hours of charter authorizer training before December 31, 2019 or were newly appointed board members eligible for an extension of time to complete all training requirements, including charter authorizer training.

Accordingly, the Commissioner recommends the districts’ Applications of Waiver of Administrative Regulations be denied because the burden of KRS 156.160(2), which requires justification of the waiver request, has not been met. Within the Applications of Waiver of Administrative Regulations, many districts assert but no district demonstrates that 701 KAR 8:020, Section 3 (4) creates a hardship or jeopardizes the continuation or development of programs within the district. The districts’ Applications of Waiver of Administrative Regulations also do not demonstrate an alternative approach will achieve the same result required by 701 KAR 8:020, Section 3 (4) or otherwise provide appropriate justification.

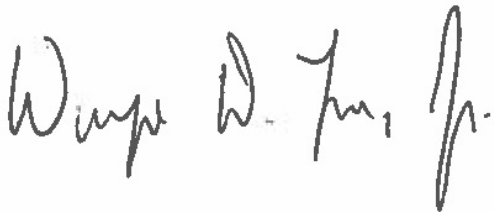
Budget Impact:

There is no budget impact to the KDE or KBE associated with the districts’ Applications of Waiver of Administrative Regulations, which request waiver of 701 KAR 8:020, Section 3 (4) relating to annual training for charter school authorizers in Kentucky.

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