

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Waiver of Certain Administrative Regulation Requirements in Response to COVID-19

Date: April 2020

Action Requested: ☐ Review ☐ Action/Consent ☒ Action/Discussion

Held In: ☒ Full Board ☐ Curriculum, Instruction and Assessment ☐ Operations

SUMMARY OF ISSUE BEFORE THE BOARD:

Novel Coronavirus (COVID-19) has caused widespread impacts on Kentucky's 172 public school districts, 53 area technology centers, Kentucky School for the Blind and Kentucky School for the Deaf. Schools are closed to in-person classes, but continue to deliver instruction utilizing the Kentucky Department of Education's (KDE) non-traditional instruction (NTI) program. In order to provide operational flexibility to school districts and ensure continued success of students, the KDE identified provisions of certain KBE administrative regulations the Commissioner recommends be waived for the remainder of the 2019-2020 fiscal year.

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends temporary waiver of the deadlines or specific regulatory provisions as set forth more fully below for the remainder of the 2019-2020 fiscal year.

APPLICABLE STATUTE OR REGULATION:

KRS 156.160; 702 KAR 7:140; 701 KAR 5:150; 703 KAR 5:270; 703 KAR 5:240; 703 KAR 5:140; 704 KAR 3:015; and 704 KAR 3:410.

BACKGROUND:

Existing Policy:

KRS 156.160 provides the KBE with the authority to promulgate administrative regulations. The same statute specifically speaks to the KBE waiving administrative regulations it promulgates.

702 KAR 7:140, Section 1(1) requires school districts to adopt a school calendar for the upcoming school year on or before May 15 of each year. 702 KAR 7:140, Section 2(1) and (3) require school districts to file new or amended school calendars with the KDE no later than June 30 of each year.

701 KAR 5:150, Section 2(3) and Section 3(4) requires school districts to submit new and amended non-traditional instruction plans for the upcoming school year at least 120 days prior to the beginning of the school year.

703 KAR 5:270 establishes the statewide system of accountability for schools and districts. On March 27, 2020, the United States Department of Education granted the KDE a waiver from statewide assessment, accountability, and reporting requirements contained in the Elementary

and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act.

703 KAR 5:240 establishes administrative procedures and guidelines for Kentucky's assessment and accountability program. On March 27, 2020, the United States Department of Education granted the KDE a waiver from statewide assessment, accountability, and reporting requirements contained in the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act.

703 KAR 5:140 establishes the standards for school and district report cards. On March 27, 2020, the United States Department of Education granted the KDE a waiver from statewide assessment, accountability and reporting requirements contained in the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act.

704 KAR 3:015 establishes the All STARS Rating System for preschool. Sections 4, 5 and 6 of this regulation relate to the expiration of school districts' star ratings.

704 KAR 3:410 establishes standards for the operation of school district preschool programs. Section 6(5)(e) and Section 7(3)(c) require two home visits per year as part of the preschool program.

Summary of Issue:

Given the uncertainty around when it may be safe to re-open schools to in-person classes, as well as the requirement in SB 177 (2020) that school districts provide 1,062 hours of instructional time on or before June 12, 2020, districts may be unable to fully plan their school calendars for the 2020-2021 school year on or before May 15, 2020 as required by 701 KAR 7:140, Section 1(1). Furthermore, the requirements in 702 KAR 7:140, Section 2(1) and (3) that districts file new or amended school calendars with the KDE on or before June 30, 2020 may not be feasible given current uncertainty around when schools may re-open to in-person classes. **Therefore, the Commissioner recommends temporary waiver of the deadlines set forth in 702 KAR 7:140, Sections 1(1), 2(1), and 2(3) for the remainder of the 2019-2020 fiscal year, and to extend the deadlines set forth in 702 KAR 7:140, Sections 1(1), 2(1), and 2(3) to June 30, 2020, July 31, 2020, and July 31, 2020, respectively.**

Likewise, it may not be feasible for districts to comply with the application timelines set forth in 701 KAR 5:150, Sections 2(3) and 3(4) which require districts to submit new or amended applications for NTI 120 days prior to the beginning of the upcoming school year. Districts currently are unsure when their current school years will end and 2020-2021 school years will begin. **As such, the Commissioner recommends temporary waiver of the deadlines set forth in the 701 KAR 5:150, Sections 2(3) and 3(4) as they apply to applications for the 2020-2021 school year, and to extend the deadlines set forth in 701 KAR 5:150, Sections 2(3) and 3(4) to June 15, 2020.**

On March 27, 2020, the United States Department of Education granted the KDE a waiver from statewide assessment, accountability and reporting requirements for the 2019-2020 school year. Statewide assessments scheduled for the spring have been cancelled across Kentucky.

Therefore, the Commissioner recommends temporary waiver of 703 KAR 5:270, 703 KAR 5:240 and 703 KAR 5:140 as they apply to assessment, accountability and reporting for 2019-2020. The KDE and school districts remain responsible for compliance with all requirements provided by the United States Department of Education as a condition of the March 27, 2020 waiver.

704 KAR 3:015 provides preschool programs sites with a STARS level certification renewable every three years. Some preschool program sites currently are in the three-year renewal cycle. On March 18, 2020, Gov. Andy Beshear issued Executive Order 2020-243 which directs all state agencies to take reasonable and necessary steps to ensure appropriate social distancing, including extending credentials or certificates that require in-person appearance. All STARS renewal requires certain steps by preschool program sites and the KDE that may involve in-person appearance. Furthermore, most preschool programs are closed to in-person services. **Therefore, the Commissioner recommends temporary waiver of 704 KAR 3:410, Section 5, and allowing the KDE to establish alternative renewal timelines for preschool program sites subject to renewal through July 31, 2020.**

704 KAR 3:410 sets forth the requirements for state funded preschool programs for four-year-old children. The regulation specifically requires at least two home visits per child each year. While home visits are an excellent opportunity for preschool staff to provide guidance and support to students and families in their home, these visits are not practical given the current state of emergency. **Therefore, the Commissioner recommends temporary waiver of 704 KAR 3:410, Sections 6(5)(e) and 7(3)(c) for the remainder of the 2019-2020 school year.**

Budget Impact:

There will be no budget impact to the KDE or school districts as a result of these temporary waivers.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

The Commissioner conducted numerous superintendent webcasts and discussed various forms of flexibility that the KDE would offer to districts in response to the COVID-19 emergency. Furthermore, the Commissioner convened the Education Continuation Task Force which is made up of various education partners. Both groups are generally supportive of flexibility to school districts during this time.

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Category: <input checked="" type="checkbox"/> District Innovation <input type="checkbox"/> Strengthening Educators <input checked="" type="checkbox"/> Family/Community Involvement <input type="checkbox"/> Student/Family Supports <input type="checkbox"/> Student Interventions <input checked="" type="checkbox"/> Coursework Completion <input type="checkbox"/> Accountability Reporting
