

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Waiver of Section 6(3)(c) of 704 KAR 7:160, Use of physical restraint and seclusion in public schools.

Date: May 2020

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board Curriculum, Instruction and Assessment Operations

SUMMARY OF ISSUE BEFORE THE BOARD:

To prospectively and conditionally waive Section 6(3)(c) of 704 KAR 7:160, Use of physical restraint and seclusion in public schools. KRS 156.160(2) grants the Kentucky Board of Education (KBE) authority to waive its own regulations and establishes the parameters for doing so.

COMMISSIONER'S RECOMMENDATION:

The Interim Commissioner recommends the KBE prospectively and conditionally waive 704 KAR 7:160, Section 6(3)(c). This prospective, conditional waiver would be applicable to school personnel that have successfully completed training in fulfillment of 704 KAR 7:160, Section 6(3)(c) since January 1, 2019 and, for these individuals only, shall extend through June 30, 2021 and be in effect for the remainder of the 2019-2020 school year and the entirety of the 2020-2021 school year.

APPLICABLE STATUTE OR REGULATION:

KRS 156.160(2) and 704 KAR 7:160

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, Section 6(3) of 704 KAR 7:160 requires “a core team of selected school personnel...be designated to respond to dangerous behavior and to implement physical restraint of students” and requires members of this team “receive additional yearly training” in several areas. Subsection (c) of Section 6(3) of the regulation specifically requires core team members annually complete “simulated experience of administering and receiving physical restraint.”

Summary of Issue:

On March 6, 2020, Governor Andy Beshear declared, pursuant to KRS Chapter 39A, a State of Emergency and directed “the issuance of appropriate state active duty orders for the necessary officers, troops, personnel, equipment, including the resources of the Kentucky National Guard and other logistical support necessary for an immediate response to the novel coronavirus (COVID-19) emergency in the Commonwealth.” Due to the risk to public health caused by COVID-19, the Centers for Disease Control and Prevention (CDC) and the Kentucky Department of Public Health (DPH) recommend that the public practice social distancing, meaning staying at home when possible and otherwise maintaining six feet of distance from other individuals, to minimize the transmission of the virus.

Successfully and safely completing “simulated experience of administering and receiving physical restraint,” as currently mandated by Section 6(3)(c) of 704 KAR 7:160, requires in-person, face-to-face training exercises, which would not comply with CDC or DPH guidelines and would risk the health and well-being of participating trainers and trainees during the current and ongoing State of Emergency. For this reason, the Interim Commissioner recommends the KBE prospectively and conditionally waive 704 KAR 7:160, Section 6(3)(c) through June 30, 2021 for school personnel that have successfully completed training in fulfillment of 704 KAR 7:160, Section 6(3)(c) since January 1, 2019. To ensure student safety and limit district liability, this waiver is being narrowly applied and will not extend to school personnel that have not successfully completed training in fulfillment of 704 KAR 7:160, Section 6(3)(c) since January 1, 2019.

The two primary providers of training pursuant to 704 KAR 7:160, Section 6, which include JKM Training, Inc. and the Crisis Prevention Institute, have advised that other training areas detailed in Section 6(3) can be completed virtually without delay. Accordingly, all school personnel serving as core team members during the remainder of the 2019-2020 school year and entirety of the 2020-2021 school year will still be required to complete training on “appropriate procedures for preventing the use of physical restraint,” “dangerous behaviors that may indicate the need for physical restraint and methods for evaluating the risk of harm,” and “documentation and notification requirements and investigation of injuries” as well as demonstrate “proficiency in the prevention and use of physical restraint.”

Budget Impact:

There is no budget impact to the KDE or the KBE associated with waiving Section 6(3)(c) of 704 KAR 7:160; however, additional staff time may be required to ensure all districts comply with the terms of any conditional approval issued by the KBE.

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Interim Commissioner of Education

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