

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Waiver of Section 3(4)(h) of 704 KAR 3:305, Minimum requirements for high school graduation.

**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 take action on the Application of Waiver of Administrative Regulations from the Jessamine County school district requesting waiver of Section 3(4)(h) of 704 KAR 3:305, Minimum requirements for high school graduation. 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 Interim Commissioner recommends the KBE conditionally approve Jessamine and Fayette County's Application of Waiver of Administrative Regulations and waive 704 KAR 3:305, Section 3(4)(h) for twelfth grade students, as of March 6, 2020, enrolled in credit recovery or another alternative credit program. The Interim Commissioner recommends that this waiver expire on June 30, 2020.

The Interim Commissioner also recommends the KBE prospectively and conditionally approve any waiver of 704 KAR 3:305, Section 3(4)(h) requested by letter to the Interim Commissioner from a local district superintendent that demonstrates support by the local board of education. This prospective, conditional approval authority shall only be granted for twelfth grade students, as of March 6, 2020, enrolled in credit recovery or another alternative credit program, and expire on June 30, 2020.

### APPLICABLE STATUTE OR REGULATION:

KRS 156.160(2) and 704 KAR 3:305

### 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 3 of 704 KAR 3:305 applies to “students entering grade nine (9) on or before the first day of the 2018-2019 academic year” and requires “a total of at least twenty-two (22) credits for high school graduation.” Subsection (4)(h) of that Section of the regulation states, “The required credits and demonstrated competencies shall include the following minimum requirements...academic and career interest standards-based learning experiences – seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student’s individual learning plan.”

*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.” In response to the declared State of Emergency and in compliance with the recommendation of Governor Beshear, Interim Commissioner Brown, and the state’s leading public health experts, all 172 Kentucky school districts, Kentucky School for the Blind, Kentucky School for the Deaf, and 53 area technology centers cancelled in-person classes effective March 16, 2020 and, immediately or soon thereafter, began implementing nontraditional instruction (NTI).

As articulated by the school district applicants, certain populations of students, particularly those at risk of academic failure, have been negatively impacted by the inability to attend in-person classes. This impact can likely be mitigated long-term for most students; however, current

twelfth grade students presently working on alternative high school completion plans are, according to Jessamine County, “unlikely to return to complete their high school coursework.” For this reason and in an effort to ensure the academic success of these vulnerable students, both Jessamine and Fayette County School Districts request waiver of the “elective course requirements included in the state minimum high school graduation requirements. Jessamine County has requested 704 KAR 3:305, Section 3(4)(h) be waived for twelfth grade students, as of March 6, 2020, enrolled in credit recovery or another alternative credit program. Jessamine County states that, if granted, this waiver will allow this limited population of students to “focus on the 15 core credits for graduation” required in Section 3 of 704 KAR 3:305, which “are most critical for success in...post-high school plans,” and “help them graduate on-time with their peers.” Fayette County requests that for students age 18 to 20 deemed at-risk of dropping out or aging out of high school be permitted to graduate without completing elective course requirements.

The Interim Commissioner also recommends the KBE prospectively and conditionally approve any waiver of 704 KAR 3:305, Section 3(4)(h) requested by letter to the Interim Commissioner from a local district superintendent that demonstrates support by the local board of education. This prospective, conditional approval authority shall only be granted for twelfth grade students, as of March 6, 2020, enrolled in credit recovery or another alternative credit program. Any waiver granted will expire on June 30, 2020.

*Budget Impact:*

There is no budget impact to the KDE or KBE associated with waiving 704 KAR 3:305; 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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