

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Waiver of Section 3 (4)(a)(2) and Section 3 (4)(c)(4) of 704 KAR 3:305, Minimum requirements for high school graduation

Date: June 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 Warren County school district requesting waiver of Section 3 (4)(a)(2) and Section 3 (4)(c)(4) 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 Warren County's Application of Waiver of Administrative Regulations and waive 704 KAR 3:305, Section 3 (4)(a)(2) and Section 3 (4)(c)(4) for students who were double-promoted to the class of 2020 this spring and who do not have the opportunity to take an assessment of college readiness in order to meet the Council on Postsecondary Education's (CPE) required benchmarks and who have met all other graduation requirements. The Interim Commissioner recommends that this waiver 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)(a)(2) of that Section of the regulation states, “If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school.” Subsection (4)(c)(4) of that Section of the regulation also states, “If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school.”

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).

Given school closure to in-person classes and the need to practice social distancing as set forth in Executive Order 2020-243, students could not report to school for in-person classes or to take a college readiness exam, such as the ACT or KYOTE test. As such, for students who double promoted from 10th to 12th grade during the spring of 2020, there is no way to know if they

would meet CPE benchmarks. As articulated by the school district applicant, these students have been negatively impacted by the inability to attend in-person classes and to take the exam. For this reason and in an effort to ensure the academic success of vulnerable students, Warren County requests waiver of the English/language arts and the mathematics transitional course or intervention, which is meant to be monitored to address remediation needs, before the exit of high school, from the state minimum high school graduation requirements. Warren County requested 704 KAR 3:305, Section 3 (4)(a)(2) and Section 3 (4)(c)(4) be waived for students who were double-promoted to the class of 2020 this spring and who do not have the opportunity to take an assessment of college readiness in order to meet CPE benchmarks and who have met all other graduation requirements. Warren County states, “We are seeking relief from the transitional course or intervention requirement since we have no way to know whether or not students who skipped 11th grade meet CPE benchmarks. We request that these students be allowed to graduate if all other graduation requirements are met.”

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

Category: <input checked="" type="checkbox"/> District Innovation	<input type="checkbox"/> Strengthening Educators	<input type="checkbox"/> Family/Community Involvement	
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