

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Campbell County School District Request for Site Acquisition Approval that Exceeds Ten Percent of the Maximum Project Budget and Request for Waiver Approval for Easements Traversing the Site Related to 702 KAR 4:050

**Date:** October 2021

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

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

### SUMMARY OF ISSUE BEFORE THE BOARD:

To approve, pursuant to 702 KAR 4:050 Section 4(5) and Section 5(1), the proposed acquisition by the Campbell County School District of a site for a new middle school for which the acquisition cost and the site development cost exceeds ten percent (10%) of the maximum project budget, and to approve, pursuant to KRS 156.160(2), a waiver to 702 KAR 4:050 Section 4(4)(b), for easements that traverse the site for a new middle school.

### COMMISSIONER'S RECOMMENDATIONS:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the site acquisition for a proposed new middle school in Campbell County for which the acquisition and site development costs exceed ten percent (10%) of the maximum project budget, and the waiver requests for easements that traverse the site for a proposed new middle school in Campbell County.

### APPLICABLE STATUTE OR REGULATION:

KRS 162.010, 156.160(2) and 702 KAR 4:050 Sections 4(5), 4(4)(b) and 5(1).

### BACKGROUND:

*Existing Policy:*

KRS 156.160((2))

(a) At the request of a local board of education or a school council, a local school district superintendent shall request that the KBE 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 KBE in writing with appropriate justification for the waiver. The KBE 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.

702 KAR 4:050, Section 4(5) states “After evaluation of the submitted documentation, the chief state school officer shall issue an approval to acquire the property or disapprove the acquisition, except when approval is required by the State Board for Elementary and Secondary Education for site cost analysis survey and acquisition cost exceeding ten (10) percent of the maximum budget for the project.”

702 KAR 4:050, Section 5(1) states in relevant part “Acquisition and site preparation costs of the local school board shall be ten (10) percent or less of the maximum budget for the project, unless authorized by the State Board for Elementary and Secondary Education.”

702 KAR 4:050 Section 4(4)(b) states that “The property shall not have easements traversing the site. Easements are allowable along perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered.”

#### *Summary of the Issue:*

The proposed site, in the City of Cold Spring, for a new middle school to serve the northern, urban portion of the county is centrally located related to the student population to be served and major transportation routes. The property consists of three parcels through which several easements traverse, two of which are for 20” and 24” diameter natural gas pipelines. A large office/distribution center is on the largest parcel. The district intends to renovate the existing building and construct additions as needed to meet programmatic requirements for the new middle school at an anticipated cost less than new construction. The district’s design team has successfully adapted a similar structure for school use in a nearby district. The acquisition cost of the site exceeds ten percent of the total project budget. The regulation addresses the acquisition of undeveloped sites and does not contemplate the acquisition of existing non-educational buildings and their adaptive reuse for schools, a viable option in certain circumstances. Consequently, it does not distinguish between the cost of property and buildings and their associated percentages related to acquisition cost. The regulation’s easement restriction relates to potential limitations to future development of undeveloped sites. The existing building has been constructed within the limitations of the existing easements. A Kentucky Public Service Commission’s Staff Opinion (2021-004) states that “the Commission’s records do not indicate that the pipelines that transverse the proposed property violate any state or federal safety of health regulations. Additionally, Commission Staff has no knowledge that the pipelines pose a safety hazard to health or environment, and properties in the vicinity.”

A new 550 student middle school on a site to be determined is Priority 1a.1 on the district’s current District Facility Plan (DFP) approved by the KBE at its August 2021 meeting.

The district reviewed multiple sites in this area for a new middle school. Because the district must acquire the property through eminent domain pursuant to KRS 162.030, various amounts related to the value of the property and acquisition cost have been provided. The highest is

\$6,500,000. As a developed site, the site development costs provided are minimal and not included in the calculation below.

Site Acquisition Cost:	\$6,500,000.00
Estimated Middle School Project Cost	\$19,136,204.00

Site Acquisition & Site Development Costs / Total Projects Cost = 33.9%

*Budget Impact:* Approval has no budget impact on state funds.

## **GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:**

702 KAR 4:050 Section 4 requires that the district consult with various entities to address the requirements regarding the proposed site acquisition and its proposed use. The district consulted with the following entities:

1. Corey T. Gamm, attorney with Adams Law, for Chain of Title/History of Ownership and sixty (60) year opinion regarding availability of fee simple title.
2. Debra Pleatman, Ziegler & Schneider, PSC, district's litigation counsel.
3. Jason Reed, Esq., school board attorney.
4. Lisa A Keaton, certified general appraiser, for appraisal.
5. Daniel K. Braun, Campbell County PVA Administrator, for property valuations.
6. Campbell County Circuit Court for Report and Award of Commissioners and Intervening Complaint.
7. Robert Ehmet Hayes & Associates, Architects for preliminary site plan, building plan and estimated project costs.
8. Viox & Viox, Civil Engineers, Surveyors and Landscape Architects, for Plat identifying property boundaries, acreage, road access, easements, and certification that the property is above the 100-year flood plain.
9. Northern Kentucky Water District for confirmation of the availability of adequate water supply for both domestic and fire protection.
10. Duke Energy Kentucky for confirmation of adequate electrical service with normal voltages of 120V/240/v, and three (3) phase and availability of natural gas.
11. SD1 confirming availability of sanitary sewer service.
12. Viox & Viox, Civil Engineers, Surveyors and Landscape Architects, for confirmation of storm water system adequacy.
13. Geotechnology, Inc. for a Phase I Environmental Site Assessment and a Preliminary Geotechnical Exploration.
14. Letter regarding potential environmental or safety hazards in the vicinity of the site.
15. Kentucky Public Service Commission related to hazards to safety hazard to health or environment, and properties in the vicinity related to the natural gas pipelines.
16. SHA Engineering, LLC for Traffic Impact Study.
17. Kentucky Transportation Cabinet (KYTC) Division of Maintenance for roadway adequacy and funding commitment for improvements in rights of way.
18. Kentucky Department of Education for initial (virtual) site inspection and tentative approval.

After evaluating the information provided by these entities, the district determined that this site meets its need for a new middle school and has requested that the Kentucky Board of Education

approve its purchase pursuant to 702 KAR 4:050 Section 4(5) and Section 5(1) and the waivers to 702 KAR 4:050 Section 4(4)(b).

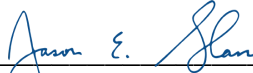
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**Commissioner of Education**

Category:	<input type="checkbox"/> Educator Workforce Diversity	<input type="checkbox"/> Portrait of a Graduate Partnerships	<input type="checkbox"/> Racial Equity
	<input type="checkbox"/> Commitment	<input type="checkbox"/> Student-Centered Accountability System	<input type="checkbox"/> Early Childhood
			<input checked="" type="checkbox"/> District Support