

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Newly proposed regulation, 704 KAR 7:170, Corporal punishment.

Date: December 2021

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 proposed new regulation, 704 KAR 7:170, Corporal punishment, in order to establish minimum requirements for the deployment of corporal punishment.

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends approval of the proposed new regulation in order to establish minimum requirements for the deployment of corporal punishment.

APPLICABLE STATUTE OR REGULATION:

156.160, KRS 158.6451, KRS 503.110, KRS 503.050, KRS 503.070

BACKGROUND:

Existing Policy:

Corporal punishment is an allowable discipline resolution in Kentucky. KRS 503.110, passed in 1982, permits the use of physical force by a teacher or other person entrusted with the care and supervision of a minor if they believe "that the force used is necessary to promote the welfare of a minor or mentally disabled person or, if the defendant's responsibility for the minor or mentally disabled person is for a special purpose, to further that special purpose or maintain reasonable discipline in a school, class, or other group; and the force that is used is not designed to cause or known to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain, or extreme mental distress."

In 2019, the Kentucky General Assembly passed KRS 158.4416, which requires the Kentucky Department of Education (KDE) to "make available a toolkit that includes guidance, strategies, behavioral interventions, practices, and techniques to assist school districts and public charter schools in developing a trauma-informed approach in schools." Additionally, it requires each local board of education to develop a plan for implementing a trauma-informed approach in its schools. The plan must include the development of trauma informed discipline policies.

KRS 158.444 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations relating to school safety, student discipline, and related matters. Similarly, KRS 156.160(1)(h) requires the KBE to promulgate administrative regulations necessary or advisable for the protection of the physical welfare and safety of public school students.

Summary of Issue:

Recent research summarized by the American Academy of Child and Adolescent Psychiatry (AACAP) suggests that corporal punishment may be harmful to student's mental wellbeing. Students exposed to corporal punishment may experience increased undesirable behaviors, an inability to self-regulate, and difficulty developing trusting and secure relationships with adults. Given this information, and in response to KDE's responsibility to promote trauma informed behavioral practices and KBE's responsibility to promulgate regulations related to student discipline and mental well-being, this new regulation seeks provide minimum requirements, rooted in harm reduction efforts, for the deployment of corporal punishment.

Section one of the regulation provides definitions for the regulation. Of note, it defines corporal punishment as "the deliberate infliction of physical pain by any means upon the whole or any part of a student's body as a penalty or punishment for student misbehavior."

Section two of the regulation prohibits the use of corporal punishment on students with Individual Education Programs (IEP) or 504 plans, and students identified as homeless or foster care youth. These students are excluded from corporal punishment due to a greater risk for expanded emotional trauma. This requirement also aligns to KRS 199.896 which prohibits the use of corporal punishment by foster parents.

Section three seeks to provide greater transparency to the use of corporal punishment. It requires schools to request written consent from the legal guardian of each student within the first five days of the school year to use corporal punishment with a student and requires schools to receive verbal affirmative consent before deploying corporal punishment.

Section four requires that schools seek to remedy problematic behavior through other, non-physical means prior to using corporal punishment, except in cases where the use of physical force are necessary for self-defense or to protect the safety of a student.

Section five seeks to promote the physical safety of students by stipulating that only a principal or assistant principal may administer corporal punishment and that corporal punishment must be witnessed by at least one additional certified staff member who is the same gender as the student. Section five also includes a provision stipulating that no staff member shall be required to administer or witness corporal punishment.

Section six seeks to imbue a level of harm reduction into the regulation by requiring that students receive a minimum of thirty minutes of counseling within twenty four hours of being subjected to corporal punishment. This section also creates new requirements for documenting corporal punishment. These documentation requirements are included to allow KDE to enforce the requirements of the regulation and to better understand the circumstances under which corporal punishments are deployed in Kentucky.

Finally, section seven seeks to encourage local input and transparency by requiring that each local board of education adopts a policy that either prohibits the use of corporal punishment in the district or outlines the conditions and expectations of corporal punishment. At the time of this

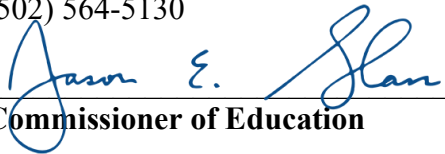
writing, 152 school districts already have policies that prohibit the use of corporal punishment and four school districts have active policies that outline the conditions under which corporal punishment can be deployed. KDE was unable to confirm dedicated corporal punishment policies in fifteen school districts.

Budget Impact:

This new regulation will not have a budgetary impact on the Kentucky Department of Education or on schools or districts.

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Commissioner of Education

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