

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Approval of Emergency Regulation 702 KAR 1:191E, District Employee Quarantine Leave

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 review and approve the emergency regulation 702 KAR 1:191E, which provides school district employees leave days when they are quarantined due to COVID-19 during the 2021-2022 school year. During the 2021 Extraordinary Session of the General Assembly, House Joint Resolution 1 (HJR 1) was enacted. The resolution invalidated, among other things, all COVID-19 related administrative regulations not specifically exempted by the resolution. 702 KAR 1:191E was not exempted by HJR 1. Thus, the previous version of the emergency employee quarantine regulation was invalidated, and it is necessary to promulgate another emergency regulation in order to provide district employees with quarantine leave for the 2021-2022 school year.

COMMISSIONER’S RECOMMENDATION:

The Commissioner recommends approval of 702 KAR 1:191E to provide vaccinated local school district employees with paid leave when they are subject to quarantine due to exposure to COVID-19 during the 2021-2022 school year. The promulgation of this emergency regulation is necessary to meet an imminent threat to public health, safety or welfare; and to protect human health.

APPLICABLE STATUTE OR REGULATION:

KRS 156.070, 156.160

BACKGROUND:

Existing Policy:

KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for:

The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

KRS 156.160(1)(h) provides the Kentucky Board of Education with authority to promulgate administrative regulations “necessary or advisable for the protection of the physical welfare and safety of the public school children.”

Previously the KBE promulgated an emergency regulation providing employee quarantine leave. That regulation was invalidated by HJR 1 from the 2021 Extraordinary Session of the General Assembly.

Summary of the Issues:

HJR 1 from the 2021 Extraordinary Session of the General Assembly provided:

All SARS-COV-2-related executive orders issued by the Governor and all executive actions and administrative orders, administrative regulations, or other administrative actions not specifically extended by this Resolution are of no further force or effect as of the effective date of this Resolution

Because the prior version of the emergency regulation was not specifically exempted by HJR 1, the regulation is invalid. This is despite the fact that the regulation was promulgated based on statutorily granted authority in KRS 156.160(1)(h) and not any claimed authority grounded in emergency powers. It is therefore necessary to promulgate a new version of the emergency regulation in order to provide school district employees with quarantine leave for the 2021-2022 school year. Even though COVID-19 cases have decreased throughout Kentucky, the pandemic remains a serious problem for districts and staff.

In order to promulgate another emergency employee quarantine leave regulation it is a requirement that the regulation be different from the voided regulation. The proposed regulation is similar to the previous version and provides relief to local school district employees quarantined due to COVID-19 exposure. It is different from the original emergency regulation in the following two ways: (1) the regulation more specifically defines the medical providers that may place an employee on quarantine, and (2) it more clearly defines what fully vaccinated means. First, the regulation provides paid leave to vaccinated employees placed in quarantine by a physician, physician's assistant or advanced practice registered nurse, a public health department, the Department for Public Health or by the school district. The prior regulation simply stated "medical provider," which created some confusion in administration. Secondly, the regulation defines fully vaccinated as having two doses of the Moderna or Pfizer vaccine or one dose of J&J's Janssen vaccine.

Beyond the aforementioned changes, the regulation is the same as the prior version. The regulation provides paid quarantine leave to fully vaccinated employees. It permits a district to require written proof of quarantine from the employee. Quarantine leave does not apply to active COVID-19 infections. The regulation grants the district discretion to determine whether an employee can perform their job functions remotely. If a district so-determines, then the employee may work remotely and no leave days are required. Finally, leave days do not accumulate or carry over beyond the 2021-2022 school year.

Budget Impact:

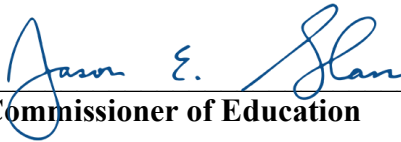
The budget impact is indeterminable at this time. Costs will depend on the number of employees placed in quarantine and any additional costs related to substitute employees.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

The proposed regulation was reviewed at the November 29, 2021 Local Superintendents Advisory Council (LSAC).

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Commissioner of Education

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