

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Administrative Regulation)

5 704 KAR 7:170. Corporal Punishment.

6 RELATES TO: KRS 156.160, KRS 158.6451, KRS 503.110, KRS 503.050, KRS 503.070

7 STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.444

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 grants the Kentucky Board of
9 Education the management and control of the common schools and all programs operated within
10 those schools. KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate
11 administrative regulations necessary or advisable for the protection of the physical welfare and
12 safety of public school students. KRS 158.444 requires the Kentucky Board of Education to
13 promulgate administrative regulations relating to school safety, student discipline, and related
14 matters.

15 Section 1. Definitions. (1) "Corporal punishment" means the deliberate infliction of physical
16 pain by any means upon the whole or any part of a student's body as a penalty or punishment for
17 student misbehavior;

18 (2) "Qualified mental health professional" means the same as defined in KRS 202A.011(12);

19 (3) "Dangerous instrument" means the same as defined in KRS 500.080;

20 (4) "Deadly weapon" means the same as defined in KRS 500.080;

21 (5) "Physical injury" means the same as defined in KRS 500.080; and

1 (6) “Serious physical injury” means the same as defined in KRS 500.080.

2 Section 2. No student with an Individual Education Program (IEP) pursuant to 707 KAR Chapter
3 1, 504 plan pursuant to Section 504 of the Rehabilitation Act of 1973, or identified as a homeless
4 or foster care youth pursuant to 704 KAR 7:090 shall be subjected to corporal punishment.

5 Section 3. (1) Within the first five (5) days of enrollment each school year, the school shall
6 request written consent from the legal guardian of each student to use corporal punishment as a
7 behavior intervention for their child. The written consent shall inform the legal guardian of how
8 to access the student code of conduct, describe the code of conduct violations that may result in
9 corporal punishment, and notify the legal guardian that consent may be withdrawn at any point
10 during the school year. Absent valid written consent signed by the legal guardian, corporal
11 punishment shall not be administered.

12 (2) Before administering corporal punishment to a pupil, the school shall contact the child’s legal
13 guardian to provide prior notification and receive affirmative verbal consent.

14 Section 4. Notwithstanding the provisions of KRS 503.070 and KRS 503.050, prior to
15 administering corporal punishment to a pupil, the school shall attempt to remedy problematic
16 behavior through other non-physical means.

17 Section 5. (1) Corporal punishment may only be administered by the Principal or Assistant
18 Principal. Corporal punishment shall only be administered in the presence of at least one
19 additional certified staff member who is the same gender as the student.

20 (2) No staff member shall be compelled to administer or witness corporal punishment.

21 Section 6. (1) After administering corporal punishment, the school shall ensure that the student
22 receives a minimum of thirty (30) minutes of counseling provided by the school’s guidance

1 counselor, school social worker, school psychologist, or other qualified mental health
2 professional no later than the end of the next school day.

3 (2) Each incidence of corporal punishment must be recorded in the student information system.

4 Schools shall report:

5 (a) The time and date which the punishment was administered;

6 (b) The name and position of the individual who administered the punishment;

7 (c) The names and positions of any witnesses to the punishment;

8 (d) The time and date of the prior consent required under Section 3;

9 (e) The name and relationship of the individual providing consent under Section 3;

10 (f) The behavioral interventions deployed prior to corporal punishment as required under Section
11 4; and

12 (g) The time and date of the student counseling appointment required under Section 5.

13 Section 7. (1) Each local board of education shall adopt a policy that either:

14 (a) Prohibits the use of corporal punishment in the district; or

15 (b) Allows the use of corporal punishment in the district.

16 (2) If the local board of education adopts a policy allowing the use of corporal punishment, its
17 policy shall:

18 (a) Define the circumstances under which corporal punishment may be deployed which shall not
19 exceed the justification included in KRS 503.110;

20 (b) Define the procedures for deploying such punishment;

21 (c) Define the tool or instrument to be used when administering corporal punishment and include
22 a prohibition on the use of dangerous instruments or deadly weapons;

- 1 (d) Define the limits on corporal punishment and ensures that corporal punishment does not
- 2 result in physical injury or serious physical injury; and
- 3 (e) Define the procedures for documenting and reporting such punishment.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

(Date)

Jason Glass
Commissioner of Education

(Date)

Lu Young, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February XX, 2022 at 10:00 am in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 704 KAR X:XXX
Contact Person: Todd G. Allen, Todd.Allen@education.ky.gov
Phone Number: 502-564-4474

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 503.110 allows for the use of physical force upon a student when the school “believes that the force used is necessary to promote the welfare of a minor... or maintain discipline in a school, class, or other group.” This practice is commonly referred to as corporal punishment. This regulation seeks to establish minimum requirements for the use of corporal punishment including a requirement to attain parental consent prior to use, requirements for the deployment of additional behavior management best practices and supports, and requirements for documentation and reporting.

(b) The necessity of this administrative regulation:

The American Academy of Child and Adolescent Psychiatry states that corporal punishment may be harmful to children. As such, this regulation seeks to reduce the potential for harm by providing foundational requirements, requiring parental notification and consent, and establishing reporting procedures.

(c) How this administrative regulation conforms to the content of the authorizing statute:

The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070, 156.160, and 158.444.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation creates uniformity in the deployment of corporal punishment across the Commonwealth. It seeks to protect the public’s right to provide input by mandating that local school districts adopt policies related to corporal punishment. Additionally, it seeks to protect the parent’s rights by requiring prior notification and consent. Finally, the regulation establishes minimum reporting requirements so that relevant administrative bodies and the public can better understand how corporal punishment is being deployed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This is a new regulation.

(b) The necessity of the amendment to this administrative regulation:

This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statute:

This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes:

This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will impact approximately thirty five public schools in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Districts will be required to adopt corporal punishment policies and report details of corporal punishment in the student information system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There should be no additional cost to districts as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Schools and districts will have uniform corporal punishment procedures and the public will have greater access to detailed information about the use of corporal punishment in Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There is no additional cost to administer this program.

(b) On a continuing basis:

KDE incurs an ongoing cost of staff and resources already in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Enforcement of this regulation is funded by the KDE General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This amendment does not establish or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Local education agencies and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 156.070, KRS 156.160, KRS 158.444

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

No additional expenditures are anticipated because of this amendment.

(4) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue.

(5) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue.

(6) How much will it cost to administer this program for the first year?

There is no initial cost to administer this program.

(7) How much will it cost to administer this program for subsequent years?

KDE incurs an ongoing cost of staff and resources already in place.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A