

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Estill County School District Request for Waiver of 702 KAR 4:180

Date: December 2023

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board State Schools United We Learn

SUMMARY OF ISSUE BEFORE THE BOARD:

Due to the poor structural condition of the Estill County Middle School, the Estill County Board of Education requests waiver of 702 KAR 4:180 Section 2, as well as Sections 503.1 and 503.2 of the Kentucky School Facilities Planning Manual pursuant to KRS 156.160(2). The waiver will permit the district to expedite the amendment of the District's DFP to prioritize the repair or replacement of the building.

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the following waivers:

702 KAR 4:180 Implementation guidelines – Kentucky School Facilities Planning Manual
“Section 2. A District Facilities Plan, and requested amendments thereto, shall be developed in accordance with the standards and hearing procedures contained in the “Kentucky School Facilities Planning Manual,” June 2008.”

Planning Manual:

Section 503.1 General – During the district's planning cycle circumstances may arise in which a district needs to make a “minor” change to their DFP, and Section 503.2.1 which limits a Finding to a minor change that “will not substantially affect the district's needs assessment.”

APPLICABLE STATUTE OR REGULATION:

KRS 156.160 permits a local school board to request the KBE waive any administrative regulation promulgated by that board. A waiver request shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The KBE may approve the request when the school district or school has demonstrated circumstances that there is an alternative approach that will achieve the same result, the implementation of the regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or there is a finding of good cause for the waiver. Administrative regulations related to health and safety, civil rights, or federal law requirements are not waivable.

In this case, the school district seeks waiver of 702 KAR 4:180 Section 2 which requires that DFPs be developed in accordance with the standards and hearing procedures contained in the planning manual as well as Section 503.1 and 503.2.1 of the Planning Manual. Section 503.1 sets forth the appropriate circumstances for a “Finding” (a minor DFP change) and Section 503.2.1 prohibits findings from impacting a district's needs assessment.

BACKGROUND:

Existing Policy:

Chapter 5 of the Planning Manual provides the available options for districts to adjust their DFP prior to its expiration (four (4) year cycle). A district may either amend or for minor changes utilize the finding process.

The amendment process may be requested when there is a major change in enrollment, curriculum, a major disaster or an unforeseen occurrence.

The amendment process requires multiple meetings of the Local Planning Committee (LPC), the local board of education, public forums, and public hearings which can take several months to accomplish.

The finding process is limited to a minor change to a District Facilities Plan which will not substantially affect the district's needs assessment. It requires the local board of education to request to reconvene the LPC, one LPC meeting, and one more board meeting can take as little as one month.

Summary of Issue:

Estill County Middle School is in a geological area in which pyritic shale is prevalent. Generally, pyritic shale is stable as long as it remains isolated from oxygen in the atmosphere. When exposed by natural processes (erosion, lowering of the water table, etc.) and/or human activities which expose the shale to oxygen, it breaks down, forms other compounds (including sulfuric acid in the presence of water) and expands which can cause differential heaving of the overlying ground, resulting in damage to floor slabs, foundations, and walls of structures founded on the shale.

Following construction of the building in 1997, the ground floor slabs heaved. Remediation occurred over several years and the situation appeared to be relatively stable. During the last year, for unknown reasons, these slabs experienced significant additional upward movement which resulted in walls supported on the ground floor slab cracking and doors binding. In one instance, personnel had to remove an inoperable door which prevented ingress and egress to a room. This movement also created differential movement between rooms on the second floor. The unforeseen occurrence related to the building's structure potentially affects the safety of its occupants.

The district requests a waiver of the regulation requiring compliance with the Planning Manual and waivers to the listed sections of the Planning Manual. This would permit the district to proceed under a finding rather than an amendment. This would allow the project to be expedited (prior to the upcoming legislative session) and permit the district to change Estill County Middle School on its DFP from an HVAC only renovation, to either the construction of a new school or a major renovation as determined by their LPC and local Board. Either of the possible changes would significantly affect the district's needs assessment.

Budget Impact:

There is no impact on KDE's budget.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

Sams Engineering:

August 7, 2023, Structural Observation at Estill County Middle School – noted that many concrete floor slab on grade areas have heaved several inches although others have not which has resulted in non-uniform movement of the building and subsequent stresses placed on the interior walls and slabs on grade. Little movement was noted of the exterior walls presumably because the footings extended further down into a less active soil zone than the interior slabs.

September 12, 2023 Addendum - recommended a monthly evaluation of the movement by the maintenance staff to identify locations of cracks, widths and extents of cracks, and approximate magnitudes of slab heave and if additional concerns arise as the result of these evaluation recommended that a reputable structural engineer investigate further.

RossTarrant Architects:

August 25, 2023 Memorandum – described the building, documented its history, discussed the issues associated with pyritic shale, and documented observations of the movement of sidewalks, floor slabs, racking of doors and frames, cracking of interior walls, etc.

September 15, 203 Memorandum – reported updating the building’s information in the Kentucky Facilities and Inventory Classification (KFICS)

Todd Reece, Estill Co. Director of Maintenance:

Memo listed the following items requiring repair and/or replacement:

Interior and exterior doors, frames, and hardware; ceiling tile and grid repair; HVAC duct; sanitary sewer piping (sewer gas); electric wiring; and kitchen equipment including walk-in refrigerator and freezer all due to movement of concrete slabs on grade.

Site issues including concrete walkway replacement; drainage issues related to other exterior paving; and geothermal well field piping due to ground movement.

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Robin Fields Kinney
Commissioner of Education

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