

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Johnson County School District Request for Waiver of 702 KAR 4:050  
**Date:** February 2024  
**Action Requested:**  Review  Action/Consent  Action/Discussion  
**Held In:**  Full Board  State Schools  United We Learn

### SUMMARY OF ISSUE BEFORE THE BOARD:

Pursuant to KRS 156.160(2), the Johnson County Board of Education requests: Waiver of Section 4(4)(b) of **702 KAR 4:050 Building sites; inspection, approval** which states “The property shall not have easements traversing the site. Commitments to relocate easement from traversing site to perimeter shall be considered.”

### COMMISSIONER’S RECOMMENDATION:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the request for waiver of the regulation requirement regarding the prohibition of an easement traversing a site and consideration of relocation to the perimeter of the site for the proposed acquisition of property.

### APPLICABLE STATUTE OR REGULATION:

KRS 156.160 Promulgation of administrative regulation by Kentucky Board of Education – Voluntary compliance – Penalty. KRS 156.160(2) states:

(a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education 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 Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education 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 Building sites; inspection, approval.  
Section 4(4)(b) "...The property shall not have easements traversing the site. Easements are allowable along the perimeter...."

**BACKGROUND:**

*Existing Policy:*

702 KAR 4:050 Section 4(4)(b) prohibits easements from traversing a proposed building site and provides consideration if the easement can be moved to the perimeter of the site. In general, easements limit the ability of the property owner to fully develop property. Easements traversing a property can significantly impact site development.

*Summary of Issue:*

The district requests a waiver of the regulation to acquire property adjacent to Central Elementary School to improve vehicular circulation and provide additional parking. Based on the schematic site plan provided by the district, the easement does not affect the district's ability to use the site for its intended purpose.

*Budget Impact:*

There is no impact on KDE's budget.

**GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:** Bocook Engineering, Inc. provided the survey including the property boundaries, location of existing buildings and easement and the proposed schematic site plan which demonstrates that the easement does not affect the district's ability to use the site for its intended purpose. The survey and schematic are attached for reference.

**CONTACT PERSON(S):**

Matthew T. Ross, Associate Commissioner  
Office of Finance and Operations  
Email: Matt.Ross@education.ky.gov  
(502) 564-1976 Ext. 4321

  
**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
--