

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Newport Ind. School District Request for Waiver of 702 KAR 4:170

**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 Newport Independent Board of Education requests:

Waiver of Part 2.a.15) of the Facility Programming and Construction Criteria Planning Guide incorporated by reference in 702 KAR 4:170 Facility programming and construction criteria which states “The finished floor elevation of any portion of new building or addition must be a minimum of twelve (12) inches above the 100-year flood plain.”

### 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 construction less than twelve (12) inches above the 100-year flood plain.

### 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 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 4:170 Facility programming and construction criteria incorporates by reference the Facility Programming and Construction Criteria Planning Guide. Part 2.a.15) states “The finished floor elevation of any portion of new building or addition must be a minimum of twelve (12) inches above the 100-year flood plain.”

**BACKGROUND:**

*Existing Policy:*

The finished floor elevation of new buildings or additions are to be a minimum of twelve (12) inches above the 100-year flood plain. State funds have not been allowed to be used for new construction or renovation below the 100-year flood plain. Funding has been limited to unrestricted sources.

*Summary of Issue:*

The district is located within the densely developed urban area of Northern Kentucky. The district’s football stadium, baseball field, and tennis courts have been located within the 100-year flood plain of a tributary of the nearby Ohio River for a number of years and predate the regulation. The district requests a waiver of the regulation to construct a new restroom building to replace an existing facility at the landlocked athletic complex.

Budget Impact:

There is no impact on KDE’s budget.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES: Robert Ehmet Hayes & Associates, PLLC, an architectural firm experienced in the design of buildings in areas subject to flooding.

**CONTACT PERSON(S):**

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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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