

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Martin County School District Request for Waiver of 702 KAR 4:050

**Date:** October 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 Martin County Board of Education requests the Kentucky Board of Education (KBE) approve the request for a waiver to the regulatory restriction regarding easements traversing a site to permit the district to acquire a site for the construction of a new elementary school.

### COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the district's request to waive the easement restrictions in 702 KAR 4:050 to acquire the subject site for the construction of a new elementary school.

### APPLICABLE STATUTE OR REGULATION:

KRS 156.160 and 702 KAR 4:050 Section 4(4)(b)

### BACKGROUND:

*Existing Policy:*

KRS 156.160 permits for the waiver by the KBE of regulations when requested by a local board of education when an alternative approach will achieve the same result required by the administrative regulation; implementation of the administrative 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. Regulations related to health and safety, civil rights or required by federal law are not subject to waiver.

702 KAR 4:050 Section 4(4)(b) states in relevant part "Plat by registered surveyor indicating property boundaries, acreage, road access, easements, and certification that property is above the 100-year flood plain. The property shall not have easements traversing the site. Easements are allowable along perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered."

Easements, especially those that traverse, i.e. run through a site, have the potential to reduce the ability to develop property. To minimize this risk, easements that are located or have commitments to be relocated to the perimeter of the property can be  
Capital construction projects cannot be approved until a building site has received final approval by the department and has been acquired by a district.

*Summary of Issue:*

The district proposes to acquire a site for the construction of a new Inez Elementary School adjacent to the high school. A large property, known as the Hollybush site, was acquired by the Kentucky Transportation Cabinet (KYTC) for the construction of KY 645E. After completion, ownership was transferred to the Martin County Fiscal Court and later to the Martin County Economic Development Authority (MCEDA). The district subsequently acquired a portion of the Hollybush site from MCEDA for the high school. The district proposes to acquire the remainder of the site from MCEDA. A non-linear, "blanket" right of way easement to Kentucky Power Company covers a significant portion of the developable area of the site. The district and its consultants are actively working to have this easement released. Approving this waiver request and other actions by the Kentucky Board of Education will permit the district's acquisition of the property, allow an initial project application to be submitted to KDE, facilitate the design process, and subsequent construction which involves federal funds which must be expended by December 31, 2026, or returned.


*Budget Impact:*

There is no impact on KDE's budget.

Enter names of groups consulted and responses

**CONTACT PERSON(S):**

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**Commissioner of Education**

Category:  Educator Workforce Diversity  Portrait of a Graduate Partnerships  Racial Equity  
Commitment  Student-Centered Accountability System  Early Childhood  District Support