

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Hardin County Board of Education request for a waiver of 702 KAR 4:050, Section 4(4)(b)

Date: December 2024

Action Requested: ☐ Review ☐ Action/Consent ☒ Action/Discussion

Held In: ☒ Full Board ☐ State Schools ☐ United We Learn

SUMMARY OF ISSUE BEFORE THE BOARD:

702 KAR 4:050 governs the location of school building sites and real property acquisition. Pursuant to KRS 156.160(2), the Hardin County Board of Education requests that the Kentucky Board of Education (KBE) waive the requirement in 702 KAR 4:050, Section 4(4)(b) which prohibits a property from having easements traversing the site. The proposed property will be acquired for the purpose of building an elementary school, middle school, high school, and athletic fields.

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends that the KBE approve the Hardin County Board of Education's request for a waiver of 702 KAR 4:050, Section 4(4)(b).

APPLICABLE STATUTE OR REGULATION:

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 1996-1997 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, 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.”

BACKGROUND:

Existing Policy:

702 KAR 4:050, Section 4(4)(b) prohibits a property from having easements traversing the site. Therefore, a waiver pursuant to KRS 156.160(2) is needed before the Commissioner can issue approval for the Hardin County Board of Education to acquire the property.

Summary of Issue:

The local board of education is requesting a waiver of 702 KAR 4:050, Section 4(4)(b) for a 116 ± acre property for the development of a new campus which will support an elementary school, middle school, high school, and athletic fields. The property contains four easements that traverse the site:

- Two sanitary sewer and storm water drainage easements are in the lower elevations of the property and naturally divide the larger 100-acre tract into three developable areas. Each of the three areas has adequate acreage for the school proposed on it.
- One electric transmission line easement is near a perimeter and slightly infringes on the edge of the developable area of the proposed elementary school.
- One utility and drainage easement separates the principle 100-acre tract from a 16-acre tract which the district proposes to utilize for athletic fields.

The district has demonstrated through a schematic site plan that the property will support the three schools without these easements interfering with the development.

Budget Impact:


There is no impact on KDE's budget.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

KDE's District Facilities Branch has reviewed the necessary documentation submitted by the district pursuant to 702 KAR 4:050 and communicated with the district throughout the review process.

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Commissioner of Education

Category: ☐ Educator Workforce Diversity ☐ Portrait of a Graduate Partnerships ☐ Racial Equity
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