

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Newport Independent Board of Education Request for Waiver of 702 KAR 4:170

Date: February 2025

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 a waiver of Part 2.a.15) of the Facility Programming and Construction Criteria Planning Guide incorporated by reference in 702 KAR 4:170 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 waiver request.

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 1996-97 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 4:170 incorporates by reference the Facility Programming and Construction Criteria Planning Guide which states in Part 2.a.15): "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 and partially in the 100-year flood plain of a tributary of the nearby Ohio River. The high school campus is surrounded by public roadways, residential development, and a public park limiting the district's ability to acquire surrounding property above the 100-year flood plain.

The district requests a waiver of the regulation to construct a new locker room building in the 100-year flood plain to replace an existing facility. The district's architect has indicated that the proposed new building will be designed with the assistance of a flood consultant and reviewed for compliance by the applicable governmental agencies. The proposed building is intended to be a two-story structure with the lower level containing unfinished storage and the upper level containing the locker room. The district's architect has further indicated that all reasonable efforts will be made to construct the lower level as high as possible and it will be wet floodproofed to allow water to flow through during a flood event. In addition, the mechanical, electrical, and plumbing systems will be raised above the 100-year flood plain level.

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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Commissioner of Education

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