

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Estill County Board of Education Request to exceed the ten (10) percent limitation in 702 KAR 4:050 Section 5(1)

**Date:** June 2025

**Action Requested:**  Review  Action/Consent  Action/Discussion

**Held In:**  Full Board  State Schools  United We Learn

### SUMMARY OF ISSUE BEFORE THE BOARD:

The Estill County Board of Education requests that the Kentucky Board of Education (KBE) authorize the local board to exceed the ten (10) percent limitation in 702 KAR 4:050 Section 5(1) for the proposed site for the new Estill County Middle School for which the site preparation costs exceed ten (10) percent of the maximum budget for the project.

### COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends that the KBE authorize the local board to exceed the ten (10) percent limitation in 702 KAR 4:050 Section 5(1) for the proposed site for the new Estill County Middle School for which the site preparation costs exceed ten (10) percent of the maximum budget for the project.

### 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 4:050 Section 5(1) states in relevant part: "Acquisition and site preparation costs of the local school board shall be ten (10) percent or less of the maximum budget for the project, unless authorized by the State Board for Elementary and Secondary Education."

**BACKGROUND:**

*Existing Policy:*

702 KAR 4:050 Section 5(1) limits site preparation costs to ten (10) percent or less of the maximum budget for the project unless authorized by the KBE. The site preparation costs for the new Estill County Middle School exceed ten (10) percent of the maximum budget for the project.

*Summary of Issue:*

The existing Estill County Middle School has experienced structural issues due to the expansion of pyritic shale beneath the building. Ground floor slabs have heaved causing masonry walls to crack and some doors to become inoperable. Remediation efforts undertaken over the years have failed. The district proposes to develop a portion of the property on which the high school and middle school are located for the construction of a new middle school (DFP Priority 2b.1 - New construction to replace inadequate spaces: expand existing or new buildings for educational purposes; consolidate schools; or replace deteriorated facilities) to replace the existing middle school. The proposed site is mountainous, heavily forested, and has the same pyritic shale geology prevalent in the region. Portions of the site are owned by the Estill County Board of Education and the Estill County School District Finance Corporation; therefore, site acquisition cost is not a factor. However, as noted below, the site preparation costs exceed ten (10) percent of the maximum budget for the project.

Item Description	Unit	QTY	Unit Price (\$)	Total (\$)
Package 1 - Mass Site Excavation <sup>1</sup>	LS	1	\$ 9,654,968	\$ 9,654,968.00
Curb & Gutter	LF	13,400	\$ 27.00	\$ 361,800.00
Sidewalks / Hardscape	SY	36,000	\$ 10.00	\$ 360,000.00
Sanitary Sewer Extension	LF	1,200	\$ 60.00	\$ 72,000.00
Sanitary Sewer Manhole	EA	7	\$ 2,500.00	\$ 17,500.00
Waterline Extension	LF	5,500	\$ 40.00	\$ 220,000.00
Underground Site Electric	LS	1	\$ 80,000.00	\$ 80,000.00
Asphalt Paving (Roadway)	Ton	9,500	\$ 100.00	\$ 950,000.00
Asphalt Paving (Parking Areas)	Ton	4,246	\$ 100.00	\$ 424,575.00
			Sub-Total	\$ 12,140,843.00
			Contingency (10%)	\$ 1,214,084.30
			<b>Total Estimated Cost of Site Development</b>	<b>\$ 13,354,927.30</b>
			Total Estimated Cost of Construction	\$ 49,435,500.00
			<b>SD %</b>	<b>27.0%</b>

*Budget Impact:*

There is no impact on KDE's budget.

**GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:**

- DECO Architects, Inc. provided a site development cost analysis noting that the site development costs are estimated to be approximately twenty-seven percent (27%) of the total project budget.
- The Estill County Board of Education provided written certification that all reasonable sites within the approvable area for the construction of the new middle school have been thoroughly reviewed and that the local board decided not to pursue acquisition or use of the alternative sites evaluated.

**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