

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Approval of 701 KAR 5:170 and 701 KAR 5:170E, Waiver Requests.

Date: August 2025

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board State Schools United We Learn

SUMMARY OF ISSUE BEFORE THE BOARD:

To take action to approve new administrative regulations 701 KAR 5:170 and 701 KAR 5:170E, Waiver Requests, to establish procedures for processing requests to the Kentucky Board of Education (KBE) to waive statutes and administrative regulations.

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends approval of 701 KAR 5:170 and 701 KAR 5:170E, Waiver Requests.

APPLICABLE STATUTE OR REGULATION:

KRS 156.161

BACKGROUND:

Existing Policy:

Through June 26, 2025, KRS 156.160(2) provided that local boards of education and school councils may request the KBE waive any administrative regulation promulgated by the KBE. This waiver process was set forth in KRS 156.120(2) and no administrative regulation was necessary related to the waiver process. Through June 26, 2025, when KDE received a waiver request pursuant to KRS 156.160(2), it was reviewed by the program area with authority over the subject matter to be waived, and a recommendation was made to the KBE regarding approval. However, the waiver authority in KRS 156.160(2) has been removed from statute and replaced with updated waiver authority.

Summary of Issue:

During its 2025 ordinary session, the Kentucky General Assembly passed Senate Bill (SB) 207, which, among other things, removed the waiver process previously set forth in KRS 156.120(2) and created a new statute related to KBE waivers. SB 207 (2025) is contained at KRS 156.161.

Effective June 27, 2025, SB 207 (2025) provides the KBE with authority to waive both its administrative regulations and statutes under the KBE's enforcement authority. However, the KBE may not waive statutes or administrative regulations:

- (a) Relating to health and safety, including required criminal background checks for staff and volunteers specified in KRS 160.380 and 161.148;
- (b) Relating to civil rights;

- (c) Required by federal law;
- (d) Relating to compulsory attendance requirements under KRS 158.030 and 158.100 or the recording of data necessary for participation in the fund to support education excellence in Kentucky;
- (e) Establishing certification requirements for teachers in core academic areas, except a waiver may authorize up to twenty-five percent (25%) of the teaching staff of a school may be employed without teacher certification if the individual possesses a baccalaureate or graduate degree in the subject the individual is hired to teach;
- (f) Requiring students' participation in state assessment of student performance, as required under KRS 158.6453;
- (g) Financial audits, audit procedures, and audit requirements under KRS 156.265;
- (h) Open records and open meeting requirements under KRS Chapter 61;
- (i) Purchasing requirements and limitations under KRS Chapter 45A and KRS 156.074 and 156.480; or
- (j) Requiring instructional time that is at least equivalent to the student instructional year specified in KRS 158.070.

SB 207 (2025) requires the KBE to promulgate an administrative regulation setting forth the waiver process. “The state board shall promulgate administrative regulations in accordance with KRS Chapter 13A to adopt a standardized waiver request form and establish any procedures for processing waiver requests in compliance with [KRS 156.161.]” Both an ordinary and emergency regulation are proposed for approval by the KBE. An emergency regulation becomes effective upon filing with the Legislative Research Commission and will remain in effect until the ordinary regulation becomes effective. An ordinary regulation takes approximately seven months to become effective. The ordinary and emergency regulation provide an identical process and forms for waiver requests. Therefore, by promulgating an emergency regulation with the ordinary regulation, school districts will have immediate access to the new waiver process.

The regulations provide standardized forms to collect all information and documents necessary to request a waiver from the KBE. Forms are designed to guide requesting parties through the process, including documents they must attach and explanations they must provide. The regulations set forth both technical and substantive review processes for waiver requests so that informed recommendations may be made to the KBE on whether a waiver should be approved or denied. Finally, the regulations provide processes for renewing and amending a previously approved waiver, KDE tracking of waivers granted, and the process for termination of a previously approved waiver.

Budget Impact:

No additional funding was appropriated to KDE for implementation of this new waiver process. KDE will utilize existing staff to manage the implementation of the waiver process as provided in SB 207 (2025) and the proposed administrative regulations. Depending on volume of requests, additional KDE personnel may be required in the future to manage and process waiver requests.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

The regulations will go before the Local Superintendents Advisory Council (LSAC) at its July 29, 2025, meeting. A summary of the feedback received by the council will be provided to the KBE prior to its August 2025 meeting.

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Commissioner of Education

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