

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Waiver Request 2026-WV-048, Covington Independent Schools, Request to Waive Various Statutes/Regulations

Date: February 2026

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

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

SUMMARY OF ISSUE BEFORE THE BOARD:

Whether the Kentucky Board of Education should approve or deny the waiver request pursuant to KRS 156.161 and 701 KAR 5:170.

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends the board deny the waiver request 2026-WV-048. The Application Cover Sheet submitted by the district is incomplete. Furthermore, the District seeks waiver of statutes/regulations that KBE does not have authority to waive, do not exist as stated by the District, or do not contain requirements as presumed by the District. Pursuant to 701 KAR 5:170, Sect. 3(3)(e)-(f), the request shall be recommended for denial.

APPLICABLE STATUTE OR REGULATION:

KRS 156.161 and 701 KAR 5:170

KRS 158.072, 156.160, 161.100, 16 KAR 2:010, 702 KAR 3:190, SB 207, 156.095, 156.265

BACKGROUND:

Existing Policy:

KRS 156.161 authorizes the Kentucky Board of Education to promulgate administrative regulations establishing procedures for processing requests to waive statutes or administrative regulations. Pursuant to this authority, the KBE promulgated 701 KAR 5:170 setting forth the procedures and forms a school district may utilize to request waivers from the KBE. Pursuant to KRS 156.161, the KBE may not waive any statute or administrative regulation:

(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

Pursuant to 701 KAR 5:170, when KDE receives a waiver request from a school district, it must first perform a technical review to determine whether the waiver meets minimum technical requirements to advance to substantive review.

Those portions of the waiver request that advance to substantive review, if any, are reviewed and the following factors are considered in determining whether a waiver is recommended to the KBE:

(a) The entirety of the waiver request;

(b) Student academic achievement for the past three full school years for which data is available in the schools and programs identified in the waiver request;

(c) Whether and to what extent the waiver request describes processes the requesting party will utilize to measure success as a result of the waiver, if granted, using data and accountability;

(d) The likelihood of the schools and programs identified in the waiver request realizing meaningful operational efficiency improvements if the waiver is granted;

(e) The likelihood of the students enrolled in the schools and programs identified in the waiver request realizing improved academic achievement if the waiver is granted;

(f) Whether and to what extent the waiver request reasonably anticipates potential adverse impacts on student academic achievement and addresses such potential adverse impacts;

(g) Whether and to what extent the waiver request demonstrates the establishment of high expectations for student learning and evidence based best practices for learning in the schools and programs identified in the request; and

(h) For special education maximum class size applications, any additional factors to be considered pursuant to 701 KAR 1:350 for waiver or exemption of special education maximum class sizes.

Following review and evaluation, the Commissioner shall recommend approval of a waiver request, or portion thereof, only if he finds the requested waiver is more likely than not: (a) To improve school or program operations without hindering student academic achievement; or (b) To improve student academic achievement at the school or program. If a waiver is granted, it shall expire on June 30 of the third full school year after the request was first approved.

Summary of Issue:

Following receipt of the waiver request, KDE performed a technical review pursuant to 701 KAR 5:170, Section 3. KRS 156.161(3) provides that the KBE "shall consider the waiver of each statute or administrative regulation included in the request at the next regularly scheduled

meeting after submission and shall either approve or deny the request.” 701 KAR 5:170, Sect. 3(3)(e)-(f) provides that if a request does not meet the application requirements, or seeks waiver of statutes or administrative regulations KBE is not permitted to waive, the waiver request shall be recommended to the KBE for denial.

As a result of its technical review, KDE determined that the waiver request should be recommended to the KBE for denial for the following reasons:

- Application Cover Sheet is incomplete – District name is missing from the form, District school/program is missing from the form, and the board meeting date District approved is missing from paragraph 14 of the form.
- KRS 158.072(2)(a) - the KBE is prohibited from waiving statutes requiring instructional time that is at least equivalent to the student instructional year specified in KRS 158.070. Furthermore, the statute listed by District relates to the appointment of a calendar committee, not the required instructional time as described in District’s Specific Waiver Request Form.
- KRS 156.160(1) – the District seeks to waive a statute which requires the KBE to promulgate an administrative regulation. If the District seeks relief from a KBE regulation, it should state the specific regulation and section number from which it seeks relief.
- KRS 161.100(1) – this statutory provision does not exist. KRS 161.100 deals with emergency teacher certification, but does not contain a subsection (1).
- 16 KAR 2:010, Section 1 – this regulation is promulgated by the Education Professional Standards Board (EPSB), not the KBE. KBE does not have authority to waive administrative regulations promulgated by an agency other than the KBE.
- 702 KAR 3:190, Section 2(1) – the regulatory provision does not exist. 702 KAR 3:190, Section 2 deals with maximum class sizes. It does not contain a subsection (1).
- SB 207 – it is presumed this means Senate Bill 207 from the 2025 legislative session, although that is unclear. SB 207 (2025) is the legislation giving KBE the authority to waive statutes and administrative regulations for school districts. However, District proposes the KBE override the very guardrails the legislature placed on granting such waivers, namely the requirement that “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.” See KRS 156.161(1).
- KRS 156.095(7) – this statutory subsection does not require 24 hours of professional development as indicated in the District’s Specific Waiver Request Form. Instead, it requires KDE to “develop and maintain a list of approved comprehensive evidence-informed trainings on child abuse and neglect prevention[...].” As such, this statutory provision relates to health and safety.
- KRS 156.265(2) – this statutory provision does not require a single salary schedule as indicated in the District’s Specific Waiver Request Form. Instead, it requires the State Committee for School District Audits to require “the accounts of each board audited not less than once every fiscal year.”

Budget Impact:

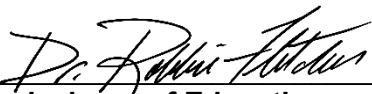
Other than staff time reviewing and processing this waiver request, there is no additional budget impact to KDE regardless of whether the waiver is granted or denied by the KBE.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

As this is a waiver request for an individual public school district school/program, no additional groups were consulted. KDE followed the KBE regulation 701 KAR 5:170 to process and review the waiver request.

CONTACT PERSON(S):

Todd G. Allen, Deputy Commissioner & General Counsel
Office of Legal Services
Email: Todd.Allen@education.ky.gov
(502) 564-4474



Commissioner of Education

Category: <input type="checkbox"/> Educator Workforce Diversity <input type="checkbox"/> Portrait of a Graduate Partnerships <input type="checkbox"/> Racial Equity Commitment <input type="checkbox"/> Student-Centered Accountability System <input type="checkbox"/> Early Childhood <input checked="" type="checkbox"/> District Support
