

## KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

**Topic:** Waiver Request 2026-WV-077, Mason County Schools

**Date:** June 2026

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

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

### SYNOPSIS OF WHAT YOU WILL BE SHARING:

Mason County Schools waiver request pursuant to KRS 156.161 and 701 KAR 5:170E.

### COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends the board waive the Kentucky School Facilities Planning Manual, Sect. 501.3-501.5 (incorporated by reference in 702 KAR 4:180).

### APPLICABLE STATUTE OR REGULATION:

KRS 156.161, 701 KAR 5:170E, and the Kentucky School Facilities Planning Manual, Sect. 501.3-501.5 (incorporated by reference in 702 KAR 4:180).

### BACKGROUND:

#### *Existing Policy:*

KRS 156.161 authorizes the Kentucky Board of Education (KBE) to promulgate administrative regulations establishing procedures for processing requests to waive statutes or administrative regulations. Pursuant to this authority, the KBE promulgated 701 KAR 5:170E 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 5:170E, when the Kentucky Department of Education (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 5:170E, Section 3. As a result of its technical review, KDE determined the request to waive the following regulation should undergo substantive review: the Kentucky School Facilities Planning Manual, Sect. 501.3-501.5 (incorporated by reference in 702 KAR 4:180).

KDE's District Facilities Branch (DFB) performed a substantive review of the waiver request. The waiver request was reviewed in its entirety and DFB has been in conversation with the district. This waiver request is for the entire school district related to facilities therefore the following factors listed in 701 KAR 5:170E Section 4(2) are not applicable:

- (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; [...]
- (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; [...]
- (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.

DFB considered the following additional factors listed in 701 KAR 5:170E Section 4(2):

(d) The likelihood of the schools and programs identified in the waiver request realizing meaningful operational efficiency improvements 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[.]

Regarding 701 KAR 5:170E Section 4(2)(d), the Mason County Board of Education has already voted unanimously to ask for a four-year extension of the current district facilities plan (DFP) which expires in May 2027. The Kentucky School Facilities Planning Manual (as incorporated by reference in 702 KAR 4:180), Section 501 sets forth a waiver process for local boards to request a waiver from KDE to extend their current DFP. The criteria under which KDE may approve the waiver is set forth in 501.1(1) and (2).

Prior to requesting a waiver under Section 501 from KDE, a district must convene a “newly constituted” Local Planning Committee (LPC). Convening a new LPC consists of new individuals being appointed to the LPC. Section 501.3 requires the new LPC to “conduct a scheduled, advertised public meeting to review the current DFP and the district’s financial, demographic and physical condition.” The new LPC, by unanimous vote, determines whether to recommend to the local board of education that the local board request a waiver from KDE to extend the current DFP. The local board must vote unanimously to approve the request for a waiver from KDE to extend its current DFP.

The Mason County Board of Education does not want to convene a new LPC. The district notes that it meets the criteria set forth in the Kentucky School Facilities Planning Manual (as incorporated by reference in 702 KAR 4:180) Sect. 501.1 to extend the current DFP and that convening a new LPC is ineffectual for the local board and community volunteers serving on local planning committees. The local board has already unanimously voted to request a four-year extension of the current DFP. An LPC provides a recommendation to a local board, and here the local board has already acted on the matter and does not desire the input of a new LPC.

Regarding 701 KAR 5:170E Section 4(2)(f), the district notes in its waiver request that this waiver will have no hinderance on student achievement.

Pursuant to 701 KAR 5:170E Section 4(3), the Commissioner recommends the KBE waive the Kentucky School Facilities Planning Manual, Sect. 501.3-501.5 (incorporated by reference in 702 KAR 4:180) because the requested waiver is more likely than not to improve school operations without hindering student academic achievement.

*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 a Brief Summary of Responses:*

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

**CONTACT PERSON(S):**

Matthew T. Ross, Associate Commissioner  
Office of Finance and Operations  
Email: matt.ross@education.ky.gov  
(502) 564-1976, ext. 4321



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**Commissioner of Education**

**GOALS/PRIORITIES:** Indicate all applicable options.

<input type="checkbox"/>	Foster Educational Innovation Through Vibrant Learning Experiences
<input type="checkbox"/>	Advance Educational Excellence Through Continuous Professional Improvement
<input type="checkbox"/>	Cultivate Collaborative Partnerships
<input type="checkbox"/>	Legislation
<input checked="" type="checkbox"/>	Commissioner's Management