

KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

Topic: Amendment to 701 KAR 5:170, Waiver Requests

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:

The Kentucky Board of Education will receive an overview of recommended amendments to 701 KAR 5:170, Waiver Requests, to comply with statutory changes made during the 2026 legislative session.

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends approval of amendment to 701 KAR 5:170, Waiver Requests, as presented.

APPLICABLE STATUTE OR REGULATION:

KRS 156.161

BACKGROUND:

Existing Policy:

KRS 156.161 was first enacted during the 2025 legislative session. The statute made changes to the way in which school districts may request waivers from the KBE, as well as expanding waiver authority to include statutes. Thereafter, the KBE promulgated 701 KAR 5:170 to govern the process utilized for waiver requests and provide standardized forms that district must use to request waivers. KDE and KBE utilized 701 KAR 5:170 since August 2025 to process approximately 93 waiver requests.

Summary of Issue:

During the 2026 legislative session, changes were made to KRS 156.161, necessitating changes to 701 KAR 5:170 to comply with the amended statute. In summary, the following changes are reflected in the recommended amendments to 701 KAR 5:170 to comply with KRS 156.161 as amended in 2026:

- Remove special education class size and caseload waivers from the KBE waiver process. These matters will now be handled via exemptions granted by the Commissioner.
- Update timeline of waiver review and decision by the KBE. KRS 156.161 now provides that the KBE shall consider waiver requests at a meeting occurring no later than 30 calendar days following receipt of a request. Requests received less than 20 days in advance of a KBE meeting will include notification to the KBE that KDE did not have sufficient time to conduct a meaningful review of the request.
- Include a process for consultation with the Education Professional Standards Board (EPSB) when a waiver of EPSB regulations is made to the KBE.
- Remove provisions regarding recommendations for approval or denial to the KBE. KRS 156.161 now prohibits the Commissioner and KDE from making such recommendations.
- Include a process for school districts to request technical assistance from KDE in identifying statutes and administrative regulations that must be waived in order to engage in proposed practices.

- Amend forms incorporated by reference to comply with statutory changes, including changes to criteria for designation as a school of innovation. KRS 156.161 amends the criteria to provide for designation as a school of innovation if all approved waivers attempt to improve student outcomes in a manner that would be difficult or impossible without the approved waivers.
- Make amendments to clarify that facility waivers no longer expire three full school years following approval.

Budget Impact:


Budget impacts to KDE are in the form of staff time and resources. Waiver requests have increased following enactment of KRS 156.161 and promulgation of 701 KAR 5:170 in 2025. No additional funding or staffing were provided to KDE to implement these new provisions. Therefore, staff must balance processing and reviewing waiver requests with other existing work required by state and federal law.

Groups Consulted and a Brief Summary of Responses:

This item will be presented for review by the Local Superintendents Advisory Council in May 2026.

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

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 checked="" type="checkbox"/>	Legislation
<input type="checkbox"/>	Commissioner's Management