

KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

Topic: Waiver Request 2026-WV-080, Perry County Schools

Date: August 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 (KBE) must consider whether it will approve or deny the waiver requested pursuant to KRS 156.161 and 701 KAR 5:170.

COMMISSIONER'S RECOMMENDATION:

KRS 156.161 provides: "The department and the commissioner shall not recommend approval or denial to the state board, but may provide the benefits and disadvantages of approving the waiver request."

Following review and evaluation of the request, the Commissioner notes the following benefits and disadvantages of approving the request:

Benefits of Approval: The district will be able to proceed with acquiring the donated real property from the Kentucky Transportation Cabinet for the Robinson Elementary School rebuild project which would improve operational efficiency.

Disadvantages of Approval: None noted.

APPLICABLE STATUTE OR REGULATION:

KRS 156.161, 701 KAR 5:170, and 702 KAR 4:050, Section 4(4)(b).

BACKGROUND:

Existing Policy:

KRS 156.161 authorizes the 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 5:170 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, 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: (1) Baccalaureate or graduate degree in the subject the individual is hired to teach; or (2) Recognized industry credential in the technical education area 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 evaluated considering the following factors:

- (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 requests seeking identification as a School of Innovation, the likelihood of improving student outcomes in a manner that would be difficult or impossible without a waiver.

Following review and evaluation, the Commissioner shall provide an analysis to the KBE, including the benefits and disadvantages of approving the request, along with the Commissioner's determination whether 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, except for facility waivers which "shall not expire unless the state board specifically provides for expiration when granting the waiver." KRS 156.161.

Summary of Issue:

Following receipt of the waiver request, KDE performed a technical review pursuant to 701 KAR 5:170, Section 3. As a result of its technical review, KDE determined requests to waive the following statutes and administrative regulations should undergo substantive review: 702 KAR 4:050 Section 4(4)(b) which states in relevant part: "The property shall not have easements traversing the site. Easements are allowable along perimeter. Commitments to relocate easement from traversing site to perimeter shall be considered."

KDE's District Facilities Branch (DFB) performed a substantive review of the waiver request which involves an easement on real property the district wants to acquire by donation from the Kentucky Transportation Cabinet. The waiver request was reviewed in its entirety, and DFB has been in conversation with the district. The following factors listed in 701 KAR 5:170 Section 4(2) were determined to not be applicable:

- (b) Student academic achievement for the past three (3) 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 waiver requests seeking identification as a school of innovation, the likelihood of improving student outcomes in a manner that would be difficult or impossible without a waiver.

DFB reviewed the following additional factors listed in 701 KAR 5:170 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 5:170 Section 4(2)(d), if the waiver is granted, the district will be able to proceed with acquiring the real property by donation from the Kentucky Transportation Cabinet for the Robinson Elementary School rebuild project which would improve operational efficiency. The easement at issue traverses the far north eastern corner of the new school site and the district states in its waiver request that "[t]he easement does not affect proposed school operation in any way."

Regarding 701 KAR 5:170 Section 4(2)(f), the district made no statement in its waiver request regarding the impact on student academic achievement. However, as previously noted, if the waiver is granted, the district will be able to proceed with acquiring the real property by donation for the Robinson Elementary School rebuild project which will benefit the district's elementary students.

As noted above, pursuant to 701 KAR 5:170 Section 4(3), the Commissioner finds that 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 5:170 to process and review the waiver request.

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Commissioner of Education

GOALS/PRIORITIES: Indicate all applicable options.

☐	Foster Educational Innovation Through Vibrant Learning Experiences
☐	Advance Educational Excellence Through Continuous Professional Improvement
☐	Cultivate Collaborative Partnerships
☒	Legislation
☒	Commissioner's Management