

KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

Topic: Waiver Request 2026-WV-081, Covington Independent 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 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: None noted.

Disadvantages of Approval: The request has not undergone a meaningful review due to the date of submission by the district. Meaningful consultation with the EPSB could not be achieved for waiver of KRS 161.020(1)(a).

APPLICABLE STATUTE OR REGULATION:

KRS 156.161 and 701 KAR 5:170

701 KAR 5:100; 702 KAR 7:140; KRS 157.320(14); KRS 158.070(1)(d), (2)(b), (c), and (f); KRS 158.6453(8); KRS 159.140(3)(a)-(b); and KRS 161.020(1)(a).

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, 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 Kentucky Board of Education, 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. KDE received the district's waiver request on July 31, 2026. The waiver request was placed on the board's agenda for the next regular meeting occurring within 30 days of receipt – August 5, 2026. KDE did not receive the district's waiver request 20 days in advance of the next regularly scheduled KBE meeting. As such, KDE did not have sufficient time to conduct a meaningful review of the request.

701 KAR 5:170, Section 2 provides that if a waiver request is received less than 20 calendar days in advance of the next regularly scheduled KBE meeting, the board shall be notified that the department did not have sufficient time to conduct a meaningful review of the request to provide the KBE with the benefits and disadvantages of approving the request. Furthermore, the department shall notify the KBE of the disadvantage of approving a request that has not undergone a meaningful review.

Furthermore, the request seeks waiver of the following statutes/administrative regulations under the authority of the Education Professional Standards Board (EPSB):

- KRS 161.020(1)(a)

Pursuant to KRS 156.161(1), the KBE may waive statutes/administrative regulation under the authority of the EPSB only after consultation with the EPSB. However, the EPSB is not scheduled to meet to review and provide consultation on the request prior to the August KBE meeting date. Therefore, meaningful consultation with the EPSB could not be achieved as provided by KRS 156.161(1).

Budget Impact:

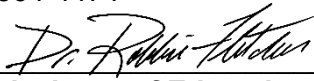
Other than staff time reviewing and processing this waiver request, there is no additional budget impact to KDE regardless of whether the waiver is granted or denied by the KBE.

Groups Consulted and a Brief Summary of Responses:

As this is a waiver request for an individual public school district 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

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