

KENTUCKY DEPARTMENT OF EDUCATION (KDE) STAFF NOTE

Topic: Waiver Request 2026-WV-081, Covington Independent Schools.

Date: August 2026 Special Meeting

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. If any waivers are approved, the KBE must consider whether it will designate one or more schools/programs as Schools of Innovation.

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 each specific waiver request, a full analysis of the benefits and disadvantages of approval are set forth for each statute/administrative regulation below. The entirety of the waiver request and the publicly available data from the Kentucky School Report Card Dashboard pertaining to the district has been considered.

Furthermore, if the KBE grants any of the waiver requests included in the district's application, the KBE must determine whether it will designate one or more schools as "Schools of Innovation." Pursuant to KRS 156.161, "the state board shall approve the request to be identified as a school of innovation if the request demonstrates that all the approved waivers [...] attempt to improve student outcomes in a manner that would be difficult or impossible without the approved waivers." The substantive review and analysis set forth below does not indicate approval of any requested waiver is likely to improve student outcomes in a manner that would be difficult or impossible without the requested waivers.

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, i.e. 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 in advance of the August 5, 2026 meeting. During the August 5, 2026 meeting, the KBE tabled action on the waiver application to a special called meeting to occur on or before August 30, 2026.

Following the KBE's August 5, 2026 action to table the matter, KDE performed another technical review and determined requests to waive the following statutes and/or administrative regulations should undergo substantive review: 701 KAR 5:100; 702 KAR 7:140; KRS 158.320(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).

KRS 158.070(1)(d), (2)(b), (c) and (f)

KRS 158.070(1)(d) defines the "school district calendar committee." KRS 158.070(2)(b) and (c) provide that the school district calendar committee recommends school calendar options to the superintendent for presentation to the local board of education. KRS 158.070(2)(f) provides that a local board of education may adopt a calendar using a variable student instructional year and provides that no student attendance day shall be more than seven hours of instructional time unless the district receives approval from the commissioner of education for an innovative alternative calendar.

The district seeks a waiver of the requirement to utilize a school district calendar committee. The district states that it wants the ability to depart from adopting a school calendar generated through the school calendar committee and that the school calendar will be developed with stakeholder input but not necessarily input from all individuals required by KRS 158.070(1)(d). The district does not indicate how utilizing a school district calendar committee hinders operational efficiency. A school district calendar committee is comprised of various stakeholders and ensures a variety of viewpoints are considered by the local board of education when adopting the school calendar. The school district calendar committee makes a recommendation to the superintendent for presentation to the local board of education. If a superintendent does not agree with the recommendation of a school calendar committee, the superintendent may inform the local board of education accordingly. A local board of education is not required to adopt the recommendation of the school district calendar committee. Thus, KRS 158.070 preserves local board decision-making authority while ensuring that the statutorily identified stakeholders have an opportunity to provide input through the calendar committee.

The district also seeks a waiver of KRS 158.070(2)(f) which provides districts flexibility to utilize a variable student instructional year, but prohibits the student attendance day from exceeding seven hours of instructional time without the approval of the commissioner of education. The district notes a desire to develop a schedule that departs from the "standard 45-55 minute period which is typically governed by a district-wide calendar." However, there is no statutory or regulatory requirement that districts must organize the student instructional day in this fashion. Per KRS 160.345(2)(i), the assignment of students to classes and programs within the school day is under the authority of the school principal consistent with the SBDM policy and local board policy. Furthermore, KRS 158.070(4)(b) prohibits instructional time beyond 7 hours daily.

District did not request a waiver of KRS 158.070(4)(b) and, therefore, will be bound by the 7 hour instructional time limit each day regardless of whether a waiver of KRS 158.070(2)(f) is granted.

When evaluated collectively, the following waivers submitted by the district, would significantly alter the established shared-governance framework for scheduling and instructional time by concentrating the scheduling authority to reside primarily within the district only. While the district notes that family and staff feedback data would be obtained through surveys, this would not occur until after the calendar is already in place.

- Request to waive the composition of the school district calendar committee to instead include "district administrators, the Innovation Task Force, and any other identified stakeholders" (KRS 158.070(1)(d));
- Request to waive the requirement to present recommendations from the school calendar committee, including recommendations received after seeking feedback from school employees, parents, and community members, to the local board of education (KRS 158.070(2)(b));
- Request to waive the local board's ability to hear and discuss recommendations from the school district calendar committee prior to adoption (KRS 158.070(2)(c));
- Request to allow the student attendance day to exceed 7 hours without approval from the commissioner (KRS 158.070(2)(f)) – although the board did not request waiver of KRS 158.070(4)(b);
- Request to waive 702 KAR 7:140 (as discussed in a separate section below) governing the school calendar in its entirety, including the approval requirements by KDE and the commissioner provided under 702 KAR 7:140, Sections 2-4;
- Request to waive the allowable activities, including courses and content aligned to the Kentucky Academic Standards, to be conducted during the school day (702 KAR 7:140, Section 5(1)(a));
- Request to waive local board policy specifying cocurricular activities, which must be instructional in nature and directly related to the instructional program within the school day (702 KAR 7:140, Section 5(1)(b) and Section 5(2)); and
- Request to waive the SBDM composition and the commissioner's approval of an alternative SBDM model (701 KAR 5:100) which directly influences the assignment of student and staff instructional time as provided KRS 160.345(2)(i).

The waiver request does not provide sufficient information to meet the requirements under 701 KAR 5:170, Section 4(2)(g) which requires the commissioner to "consider whether and to what extent the waiver request demonstrates evidence based best practices for learning in the schools and programs identified in the request." The waiver request lists elementary, middle and high schools, and does not specify an instructional plan that differentiates between these grade-bands. While it may be appropriate to allow high schools to extend the instructional day beyond seven hours for the purposes described in the request, evidence does not support lengthening the instructional day beyond seven hours, especially for younger students. A meta-analytic review of increased learning time finds mixed effects overall and emphasizes that outcomes depend on setting, implementation features, and student population served ([Kraft, M. et al, 2025](#) and [Kidron, Y. et al 2014](#)). [Evidence](#) indicates that gains are larger when additional time is part of a coherent reform (high-quality instruction, aligned materials, deliberate use of added minutes) ([Kraft, M. et al 2025](#)). The relationship between learning time and achievement can be curvilinear (diminishing returns) and research indicates that schools should optimize instructional time for when students can best concentrate ([Organisation for Economic Co-operation and Development \(OECD\), 2016](#)). Research suggests that the highest-yield approach

is to focus on protecting and strengthening instructional quality, not just increasing the clock ([Kidron, Y. et al, 2014](#)). Therefore, based on the research cited above, the proposed waiver could hinder academic achievement, especially for elementary and middle school students.

In addition, the district did not provide sufficient information in its waiver request regarding how KRS 158.070(2)(f) hinders operational efficiency. In fact, KRS 158.070(2)(f) extends operational flexibility by allowing the district to design a calendar without regard to the otherwise required 170 student attendance days. Pursuant to KRS 158.070(2)(f), if the district wants to adopt a school calendar with a student attendance day that exceeds seven hours, the district must seek approval from the commissioner of education. This allows the commissioner to evaluate the district's actual proposed calendar rather than issue a blanket approval to exceed seven hours through this waiver request. Allowing the district to exceed seven hours without knowing the proposed calendar and length of the student attendance day may hinder student academic achievement and outcomes as previously noted. The district is currently utilizing the variable student instructional year calendar option for the 2026-2027 school year. If waiver of KRS 158.070(2)(f) is granted, the variable student instructional year will no longer be available to the district.

The district states that departing from the school calendar generated by the school calendar committee allows for the development of a schedule that "supports project-based learning, laboratory work, and extended discourse based on instruction." However, there is already flexibility granted to local schools and districts to allow for innovative, work-based experiences without waiving KRS 158.070(2)(f). 704 KAR 3:305, Section 6 already provides districts with the flexibility to allow students to earn performance-based credits regardless of the number of instructional hours beginning in grade 5. 704 KAR 3:305, Section 6(6) further allows the district's performance-based credit policy to award high school credit for a "standards-based internship, cooperative learning experience, or other supervised experience in the school or the community."

In conclusion, it is unlikely that this waiver will result in the district realizing improved school or program operations, student academic achievement, or student outcomes as written.

701 KAR 5:100

This regulation provides details related to how schools should operate school-based decision making (SBDM) councils as required by KRS 160.345. It is unclear if the district is seeking a waiver from the entirety of the regulation or from just the timeline for establishing an alternative model for SBDM in Section 2 of the regulation. Given that:

- KRS 160.345 requires the inclusion of SBDM within a school's governance model, and
- KRS 160.345(5) provides the minimum requirements for establishing an alternative SBDM model, and
- the district has not sought a waiver of KRS 160.345,

this review assumes that the district is seeking a waiver from 701 KAR 5:100(2) only. The regulatory timeline is as follows:

- Applications are accepted on or after January 1 and prior to March 1 of each calendar year.
- Applications are reviewed by the KBE at its April meeting.
- Implementation of an approved alternative model begins July 1.

It is unclear from the application how the waiving of the alternative model timeline supports the effective management of schools in the district. Currently, Kentucky has four schools implementing alternative models under the current provisions. There is no indication from these schools that the timeline is a hinderance to the model's implementation, nor has Covington Independent provided such a description in the waiver application.

The timeline established in 701 KAR 5:100(2) ensures that the KBE has sufficient time to review and approve alternative models before SBDM council elections are held in the late spring. The district should have already held council elections for the 2026-27 school year, and current councils should already be seated and working in support of their students. A timeline waiver would result in a mid-year disruption to the established governance of the school.

Regardless of whether the KBE waives the timeline outlined in 701 KAR 5:100(2), since the district has not asked to waive KRS 160.345, the information provided in the waiver application is insufficient to support the implementation of alternative models. KRS 160.345(7) states:

A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making, including but not limited to a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the commissioner of education and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.

As such, each school will still be required to complete the SBDM alternative model application, described in 701 KAR 5:100(6), prior to implementing the model in the schools identified in the waiver request. As the statute places the alternative application at the school level, each school will be required to complete its own application and ensure that it has reached the two-thirds agreement threshold outlined in the statute. This means that the alternative model application will not be reviewed by the KBE until its October meeting at the earliest. Given appropriate time for notification and elections, new SBDM councils would not be established until November 2026, resulting in the mid-year governance disruption previously mentioned.

Further, if the district had intended to waive the entirety of 701 KAR 5:100, the submitted waiver does not meet the statutory minimum for establishing an alternative model under KRS 160.345(7). Should the KBE waive the entirety of 701 KAR 5:100, there will be no process by which the district can establish their alternative model, provide the required evidence under KRS 160.345(7), document the minority requirements under KRS 160.345(2)(b)(2), or document required training under KRS 160.345(6). This would create an additional administrative burden on both the KDE and the district as the KDE would have to create a new process for the district to follow and train the district on such a process. This process would have to be different than existing processes, meaning that the tools established for the streamlining and management of statutory reporting would not be available to the district, resulting in an increase in paper forms.

The KDE has long held that alternative SBDM models may support student achievement and innovation. The district's desire to include local industry representatives is especially cogent given the location and workforce needs of their community. However, the district has not addressed in the application how a waiver of the alternative model timeline, and its subsequent mid-year disruption to the school's governance model, will be managed. The district

acknowledges these concerns within the application but does not provide sufficient detail to explain how these concerns will be addressed and risks to student outcomes reduced. Finally, the waiver application refers to the council's "advisory composition." In Kentucky, SBDM councils are not advisory. They have statutorily granted authority to oversee a number of areas of school governance. If the district wishes to include additional community stakeholders in an advisory capacity, they can do so without seeking a waiver.

In conclusion, it is unlikely that this waiver will improve student outcomes, achievement, or operational excellence. A timeline waiver would result in mid-year governance disruptions that are likely to create confusion throughout the organization. Similarly, a waiver of the full regulation would create further confusion and bureaucratic barriers to success. Both scenarios may harm student outcomes and introduce unnecessary risk into the functioning of the schools. Neither of these waiver scenarios remove a barrier that is difficult or impossible to navigate for schools in the district wishing to enact alternative SBDM models as other schools have successfully navigated the existing alternative SBDM model process without issue.

702 KAR 7:140

702 KAR 7:140 governs the adoption and amendment of school calendars, missed instructional time, emergency day waivers by the commissioner of education, and activities to be conducted during the student attendance day.

The district seeks a waiver from 702 KAR 7:140 in its entirety. The district notes in its waiver request that it cannot meet the deadlines set forth in the regulation for adopting and amending a school calendar, but the request lacks sufficient information as to why the district believes it is unable to meet these deadlines. The district has already adopted its calendar for the 2026-2027 school year, and it is unclear why the district would not have sufficient time to adopt a calendar within the regulatory framework for the 2027-2028 school year.

The district notes that it also seeks a waiver from the district wide calendar and schedule. However, the district can already establish a different calendar and schedule for each of its schools without a waiver of this regulation. The waiver request specifically notes a desire to waive 702 KAR 7:140, Section 3 "as to afford the ability to shorten days, without approval or declaration of emergency by the board of education." 702 KAR 7:140 Section 3 provides that a student attendance day shall not be shortened after the school calendar has been adopted except in cases of emergency declared by the superintendent in accordance with policies of the local board of education. A district may already establish or amend its school calendar to include shortened days. Otherwise, a school day may only be shortened due to an emergency which is determined by the superintendent in accordance with policies of the local board of education. Shortening a school day due to an emergency creates disruptions to district operations and families and these disruptions would exist if the district were permitted to shorten school days for circumstances other than emergencies. Therefore, it is unlikely that permitting the district to shorten school days in such manner for any purpose would result in operational efficiency.

In addition, KRS 156.161 prohibits the Kentucky Board of Education (KBE) from waiving any statute or administrative regulation that requires instructional time at least equivalent to that set forth in KRS 158.070. 702 KAR 7:140 ensures that school districts develop school calendars that satisfy the instructional time requirements in KRS 158.070. 702 KAR 7:140 Section 3 and 4 govern instructional time missed and the process for the commissioner of education to grant emergency day waivers for missed student attendance days. The district does not specifically

address the necessity of a waiver for the requirements in 702 KAR 7:140 Section 4 nor has the district provided a plan for how instructional hours will be recovered for any days missed or shortened.

Additionally, the request does not specify "evidence based best practices for learning in the schools and programs identified" as required under 701 KAR 5:170, Section 4(2)(g). Kentucky's statutory requirements for instructional time already fall below national norms for both days and hours. While approximately 180 instructional days and 900-1,080 instructional hours are most common nationwide, Kentucky's instructional year is 1,062 hours and 170 student attendance days (KRS 158.070) for districts using traditional calendars. When combined in comparison to other states with required instructional days/hours, Kentucky's instructional year ranks 43rd. ([Education Commission of the States, 2023](#); [Pew Research Center, 2023](#)).

Research consistently finds that more instructional time can improve student outcomes and that calendar redesign works best when paired with a coherent academic strategy ([Kraft, et al, 2025](#)). Without a district-wide strategy or specific measures for academic success, students across the district may experience the curriculum at different intervals which negatively impacts transient students and further inhibits access to grade-level learning regardless of where a student attends school. A large synthesis of causal research on time in school reports a clear positive effect of additional time on achievement, with impacts varying by dosage and implementation. Studies highlight that schools often lose substantial learning time through disruptions that could be recovered within existing schedules but an analysis of the existing schedule is not provided by the district.

The request to waive 702 KAR 7:140 in its entirety includes Section 5 which lists allowable activities of a student attendance day. The allowable activities conducted during the school day include courses and content provided in the *Kentucky Academic Standards (KAS)* in addition to cocurricular activities related to the instructional program. The request would waive these requirements and do so without alignment to local board policy. The KAS are developed in accordance with KRS 158.6453 and required under 704 KAR Chapter 8, both of which are not included in the waiver. Alignment to the KAS is critical in ensuring that all Kentucky students have the opportunity to learn the standards in their entirety in order to receive access to high-quality, grade-level learning regardless of where they attend school. Within the request, the district did not address the need to waive Section 5 or provide an explanation of how waiving Section 5 would result in increased academic achievement. There is no indication of methods to measure progress or intent to align to evidence based best practices. 702 KAR 7:140 Section 5 also ensures compliance with the instructional time requirements in KRS 158.070 by requiring a school schedule that delineates instructional time periods and noninstructional time periods.

701 KAR 5:170 Section 4(2)(c) requires the waiver request to describe how success will be measured through data and accountability. While the district identifies attendance, engagement, and "academic achievement and growth" as measures for success, the request does not provide specific academic areas to be measured, methods for progress monitoring, or anticipated outcomes based on evidence-based best practices. Therefore, there is not enough information to conclude that the proposed measures can adequately evaluate the effectiveness of the waiver or to determine whether it will result in improved student outcomes, as required by Sections 4(2)(c) and 4(2)(e).

In addition, the district makes a reference to "[l]ocally designed non-traditional instruction days" in its waiver request. As the district has not sought a waiver of KRS 158.070(9) or 701 KAR

5:150, the approval of this waiver would not grant the district any new flexibilities related to non-traditional instruction rules or procedures.

It is unlikely that the waiver of this regulation, as written, will result in the district realizing improved school or program operations, student academic achievement, or student outcomes. As stated above, KRS 156.161 prohibits the KBE from waiving any statute or administrative regulation that requires instructional time at least equivalent to that set forth in KRS 158.070. 702 KAR 7:140 ensures that school districts adopt a school calendar with the required instructional time pursuant to KRS 158.070 and is necessary for KDE to administer SEEK funding. Ultimately, the district did not provide any information in its waiver request for this regulation that would support improved operational efficiency, student academic achievement, or student outcomes by not being required to follow this regulation.

KRS 157.320(14)

KRS 157.320 provides all “[d]efinitions for KRS 157.310 to 157.440” and, in paragraph (14), defines “[s]ingle salary schedule” as a schedule adopted by a local board from which all teachers are paid for 185 days based upon training, experience, and other factors as approved by the KBE. The district did not request a waiver of KRS 157.350(3)(a), which requires school districts to compensate all teachers on the basis of a single salary schedule in order to be eligible for Support Education Excellence in Kentucky (SEEK) funding. However, within the Specific Waiver Request Form, the district states that it “seeks flexibility from the mandated single salary schedule – structured by rank and years of experience – which” does not account for “measured teacher performance and results” and that “the District is requesting a waiver from the single salary schedule imposed by KRS 157.320(14) in general.”

The district’s request to waive KRS 157.320(14) does not adequately describe the processes that will be utilized to measure success as a result of the waiver, if granted, using data and accountability. District indicates it will “measure teacher retention and turnover rates in **targeted** schools and subjects, relative to baseline” and that it will “review the size and quality of the applicant pool for **targeted** positions.” (emphasis added) Similarly, the district states that it “will periodically measure student achievement and academic growth within the **affected** classrooms and schools.” (emphasis added).

District seeks a waiver KRS 157.320(14) for every school and program in the district. However, were the district to only measure data from specific schools, subjects/classrooms, or positions where “higher, more flexible base compensation” had been implemented while, at the same time, excluding data from specific schools, subjects/classrooms, or positions where “higher, more flexible base compensation” had not been implemented, the results would be skewed and any indication of success would be likely incomplete, if not entirely untrustworthy. It is critical that district explain with specificity how and from what sources data points will be gathered and analyzed, how frequently such data will be gathered and analyzed, and how collected data will be used by district leadership to inform future decision-making and implementation of the waiver of KRS 157.320(14), if granted.

Further, district’s request to waive KRS 157.320(14) does not reasonably anticipate all potential adverse impacts on student academic achievement and address those potential adverse impacts. Specifically, district states “a differentiated compensation structure risks generating morale concerns, or the perception of an inequitable, two-tier system” but believes such “risks can be best mitigated through a validated, multiple-measure evaluation system, criteria co-developed with educators, and sustained monitoring of effects on collegial collaboration and

school climate.” The potential adverse impacts are greater, though, as implementing a varied salary schedule may negatively impact district-wide finances and operations. Specifically, a single salary schedule provides school districts with the ability to anticipate the future fiscal impact of teacher compensation, whereas the fiscal impact of a varied salary schedule is harder to predict. District does not, however, address the broader risk to district finances that may result from the instability created by not implementing a single salary schedule. Differentiated pay can also lead to risk and potential liability should such disparities run afoul of state and federal antidiscrimination laws, including but not limited to the Equal Pay Act of 1963 and Title VII of the Civil Rights Act. District should further detail the pay structure it seeks to implement if a waiver of KRS 157.320(14) is granted and proactively address how it will ensure legal compliance and fiscal responsibility.

Additionally, District request to waive KRS 157.320(14) does not demonstrate the establishment of high expectations for student learning and evidence based best practices for learning in the schools and programs identified in the request. District states that “there is mixed evidence on performance pay” and that some “programs have shown negligible effect on achievement” or “distorted incentives.” District notes its support of a “rigorous, multiple-measure evaluation system” but does not detail that system beyond indicating it will not only include “student state assessment scores in isolation.” District certified evaluation plans (CEPS) should reflect and support Kentucky’s commitment to every student being taught by an effective teacher by promoting the vision of continuous professional growth and development of skills needed to be a highly effective educator. While local plans should be designed to align with KRS 156.557 and 704 KAR 3:370, they also should catalyze professional growth and create a fair and equitable system to promote and measure teacher effectiveness. Without receiving more details regarding district’s precise plan to implement “higher, more flexible base compensation,” which presumably would also impact its CEPS, KDE cannot determine whether this request would implement evidence based best practices.

In light of the foregoing, it is unlikely the schools and programs identified in the district’s waiver request will realize meaningful operational efficiency improvements if the waiver of KRS 157.320(14) is granted by the KBE. It is also unlikely that the students enrolled in the schools and programs identified in the district’s waiver request will realize improved academic achievement if the waiver of KRS 157.320(14) is granted by the KBE. Instead, students enrolled in the schools and programs identified in the district’s waiver could suffer harm should the waiver of KRS 157.320(14) be granted by the KBE, particularly in the event that the district implements a varied salary schedule that creates unpredictability in financial forecasting and risks budgetary as well as legal stability.

Finally, district’s waiver request does not attempt to improve student outcomes in a manner that would be difficult or impossible to achieve without a waiver of KRS 157.320(14). 702 KAR 3:310 explicitly allows for the adoption of a “differentiated compensation plan to accomplish the purposes established in KRS 157.075 to address identified district needs.” For reference, KRS 157.075(2)(a) says differentiated compensation plans “shall have one (1) or more of the following purposes” and lists, for examples, goals to “recruit and retain teachers” as well as “provide incentives...(for) highly skilled teachers to serve in difficult assignments and hard-to-fill positions” and to incentivize “skills, knowledge, and instructional leadership.” Although the district notes that it needs “more flexibility” than what the differentiated compensation structure set forth in KRS 157.075(2)(a) and 702 KAR 3:310 provides due to the “evolving nature of the innovation,” the district does not provide adequate information regarding why the latitude that already exists in statute and regulation is insufficient for its purposes. Namely, 702 KAR 3:310 specifically states that a differentiated compensation plan may include “individual performance.”

Accordingly, it is unclear why the district believes it is unable to achieve its desired results under the current legal framework and, thus, why a waiver of KRS 157.320(14) is necessary.

KRS 158.6453(8)

This statute provides: *“A local school district may select and use commercial interim or formative assessments or develop and use its own formative assessments to provide data on how well its students are growing toward mastery of Kentucky academic standards, so long as the district's local school board develops a policy minimizing the reduction in instructional time related to the administration of the interim assessments. Nothing in this section precludes teachers from using ongoing teacher developed formative processes.”*

The district desires to supplement state accountability indicators by implementing formative assessments to collect data on social emotional metrics and career-readiness indicators specific to a local pathway. District indicates it wishes to deploy assessments “to provide data on objectives that are *not contained within the Kentucky academic standards*.” Emphasis added.

The request to waive KRS 158.6453(8) does not provide sufficient information to determine whether a waiver would improve operational efficiency, academic achievement, or other student outcomes. However, KRS 158.6453(8) does not prevent the district from implementing locally developed interim assessments to measure objectives not contained within the Kentucky Academic Standards. Therefore, a waiver of KRS 158.6453(8) is unnecessary.

KRS 159.140(3)(a)-(b)

This statute establishes the conditions under which students shall be reported to the county attorney for habitual truancy and being absent without an excuse for fifteen (15) or more days. The district wishes to replace the statutorily defined protocol with an undefined locally determined tiered attendance intervention model.

While a well-designed locally determined tiered attendance intervention model may lead to increased student outcomes when compared to the current statutory process, the current waiver application does not sufficiently describe the intervention model that will replace the statutory process. As such, the Department is unable to determine whether the waiver may support or harm student outcomes. A model without appropriate supports may inadvertently harm student outcomes by increasing absenteeism or lowering accountability for families. Because state education funding is tied, in part, to student attendance, any increase in student absenteeism resulting from the waiver could also negatively affect the district's state funding and its operations.

Additionally, as the district has not sought a waiver of KRS 159.010, which defines the elements of compulsory attendance, the tiered intervention model must be constructed in such a way as to prevent noncompliance with this statute as well. As the current waiver application lacks sufficient detail, the Department is unable to say whether the waiver will conflict with the requirements of KRS 159.010.

In conclusion, due to the lack of detail in the waiver application, the Department is unable to determine whether this waiver will support or harm long-term student outcomes. The waiver could negatively affect school operations if implementation results in lower student attendance and a corresponding reduction in state funding. As such, it cannot be concluded the waiver is

more likely than not to improve school or program operations, student academic achievement, or student outcomes.

KRS 161.020(1)(a)

KRS 161.020 is within the authority of the EPSB to enforce and states, in paragraph (1)(a), that “[n]o person shall be eligible to hold the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued, or receive salary for services rendered in the position, unless he or she holds a certificate of legal qualifications for the position, issued by the” EPSB. Notwithstanding this mandate, KRS 156.161(1)(e) states the KBE “shall not waive any statute or administrative regulation...[e]stablishing 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:

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.”

KRS 156.161(1) provides that the KBE “may also grant a waiver from the requirements of an administrative regulation promulgated by” the Education Professional Standards Board (EPSB) as well as grant waivers from statutes over which the EPSB “has authority to enforce” but only “after consultation with the” EPSB.

The EPSB met on August 18, 2026 to review the Specific Waiver Request Form submitted by the district. At that time, the EPSB voted to recommend that the KBE deny the request from the district and not issue a waiver of KRS 161.020(1)(a), as permitted in limited circumstances under KRS 156.161(1)(e). A letter from the EPSB Chair, Ms. L. Amber Snell, detailing the full recommendation of the EPSB has been submitted to the KBE Chair, Dr. Lu S. Young.

District’s request to waive KRS 161.020(1)(a) does not adequately describe the processes that will be utilized to measure success as a result of the waiver, if granted, using data and accountability. District perfunctorily states that it will “track enrollment, completion, and credential-attainment rates,” will “obtain student and staff feedback,” and will “collect data on retention of non certified staff.” However, the district does not explain, for example, what tools will be used to gather and analyze such data points, how frequently such data will be gathered and analyzed, or how collected data will be used by district leadership to inform future decision-making and implementation of the waiver of KRS 161.020(1)(a), if granted.

Further, the request to waive KRS 161.020(1)(a) does not reasonably anticipate all potential adverse impacts on student academic achievement and address those potential adverse impacts. Specifically, the district states that “industry experts without formal pedagogical (sic) training may require additional support in classroom management and instructional design” and that use of such “may dilute instructional consistency without robust mentorship and oversight.” To address this, the district proposes developing and implementing “structured onboarding” and “ongoing instructional coaching” as well as “pair a certified mentor teacher with the industry expert teacher.” To the extent the waiver is referring to occupation-based career and technical education (CTE) teachers, it is unclear how the district proposed training differs from current structures within occupation-based certification through the New Teacher Institute (NTI) that exists to provide a mentor teacher and support all new occupation-based CTE teachers with training in pedagogy, classroom management, instructional planning, and assessment. District does not, however, address concerns that arise when a career and technical education course

is taught by an educator who is not certified, including but not limited to such course being ineligible for funding under the Carl D. Perkins Career and Technical Education Act as well as not being reported in the Technical Education Database System (TEDS) for tracking of Attend Hours, Concentrator status, industry certification, and similar.

District also does not address how these “industry experts” will be held to the same ethical standards as certified educators and expected to maintain the dignity and integrity of the teaching profession by adhering to established law. Specifically, any individual serving in a public school position for which certificates may be issued is currently required to submit to a Character and Fitness review by the EPSB, pursuant to the authority established in KRS 161.028(1)(a), and, upon certificate issuance, is subject to the disciplinary actions outlined in KRS 161.120 as well as the Professional Code of Ethics for Kentucky School Certified Personnel set forth in 16 KAR 1:020. The “industry experts” district proposes hiring to serve in “non certified” teaching positions will not have undergone scrutiny pursuant to KRS 161.028(1)(a) or be subject to KRS 161.120 or 16 KAR 1:020, resulting in potential risk to students, parents and guardians, the community, and the teaching profession that district has not anticipated or proactively addressed within its request to waive KRS 161.020(1)(a).

Additionally, the district’s request to waive KRS 161.020(1)(a) does not demonstrate the establishment of high expectations for student learning and evidence based best practices for learning in the schools and programs identified in the request. In the Specific Waiver Request Form, district asserts that a waiver of KRS 161.020(1)(a) will allow them to bring “credentialed industry professionals into the classroom” increasing the “authenticity (sic) and rigor of technical coursework” but does not provide any justification, evidence based or otherwise, as to why this cannot be achieved using existing certification options. In fact, under 16 KAR 2:020, the EPSB “may issue occupation-based certificates for any career and technical area for which programs may be offered under the required Kentucky Academic Standards established in 704 KAR Chapter 8.” Further, the Kentucky General Assembly has enacted, pursuant to KRS 161.048, nine (9) alternative routes to teacher and administrator certification for individuals demonstrating exceptional work or educational experiences. In addition, if the district is unable to fill a certified teaching position with a qualified teacher, district may be able to fill the position with a person who meets the minimum qualifications for emergency certification, which are set forth in KRS 161.100 and 16 KAR 2:120. There are, though, educator certification requirements that are not set forth in the Kentucky Revised Statutes or in the Kentucky Administrative Regulations but, instead, are governed by applicable federal law, including but not limited to 34 CFR § 300.156 pertaining to the “[q]ualifications for special education teachers.” Utilizing existing certification options would allow the district to proactively address legal nuances such as this and remain compliant with all applicable requirements, whether at the state or federal level.

In light of the foregoing, it is unlikely the schools and programs identified in the waiver request will realize meaningful operational efficiency improvements if the waiver of KRS 161.020(1)(a) is granted by the KBE. It is also unlikely that the students enrolled in the schools and programs identified in the waiver request will realize improved academic achievement if the waiver of KRS 161.020(1)(a) is granted by the KBE. Instead, students enrolled in the schools and programs identified in district’s waiver request could suffer harm should the waiver of KRS 161.020(1)(a) be granted by the KBE, thus resulting in the subversion of KRS 161.028(1)(a) and KRS 161.120 as well as 16 KAR 1:020.

Finally, the waiver request does not attempt to improve student outcomes in a manner that would be difficult or impossible to achieve without a waiver of KRS 161.020(1)(a) being granted by the KBE. In fact, there are occupation-based certificates in areas such as manufacturing,

health science, computer science, and law and public safety, among others; multiple alternative routes to educator certification for individuals demonstrating exceptional work and/or educational experiences; and, emergency certification options that may all be available to the district. Further, the EPSB desires to support and be collaborative with Kentucky's public school districts and, to that end, routinely considers requests to waive its administrative regulations. The district could pursue the EPSB's waiver process at any time and for any job candidate it desires to employ that does not otherwise meet certification requirements. All of these options would still ensure individuals serving in teaching positions in the district are properly credentialed, have completed a Character and Fitness review by the EPSB, and remain subject to KRS 161.120 and 16 KAR 1:020.

In summary, several questions regarding implementation, accountability, student outcomes, governance, operational effectiveness, and statutory compliance remain to be addressed in the waiver's current form. Across the waiver requests, a recurring consideration is whether sufficient information has been provided to demonstrate that the requested flexibility is necessary, evidence-based, supported by appropriate safeguards, and likely to improve student outcomes or operational effectiveness through measurable accountability indicators. The Board may want to consider the following questions (and/or others) to determine the benefits and disadvantages before approving/denying each waiver request:

- How do the existing requirements impede the district's innovation strategy?
- What specific flexibility would the waiver provide that is not already available?
- How will success be measured, including baseline data, progress monitoring benchmark goals, and overall success goals as it relates to improved operations and/or improved student academic achievement?
- What research and/or best practices support the approach?
- What potential risks to students, staff governance, finances, instruction, or compliance may result?
- What safeguards and accountability mechanisms will remain in place?
- How will stakeholders be involved?
- What measurable outcomes would justify continuation, modification, or reconsideration of a specific waiver over time?

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.

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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