

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

704 KAR 7:170. Corporal Punishment.

RELATES TO: KRS 156.160, ~~KRS 158.6451, KRS 503.110, KRS 503.050, KRS 503.070,~~ **503.110**

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.444

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 ~~authorizes/grants~~ the Kentucky Board of Education ~~to manage/the management~~ and control ~~of~~ the common schools and all programs operated within those schools. KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate administrative regulations necessary or advisable for the protection of the physical welfare and safety of public school students. KRS 158.444 requires the Kentucky Board of Education to promulgate administrative regulations relating to school safety, student discipline, and related matters. **This administrative regulation establishes the conditions under which corporal punishment may be used in public schools.**

Section 1. Definitions.

(1) "Corporal punishment" means the deliberate infliction of physical pain by any means upon the whole or any part of a student's body as a penalty or punishment for student misbehavior. ~~;~~

(2) "Qualified mental health professional" ~~is/means the same as~~ defined ~~by/in~~ KRS 202A.011(12). ~~;~~

(3) "Dangerous instrument" ~~is/means the same as~~ defined ~~by/in~~ KRS 500.080(3). ~~;~~

(4) "Deadly weapon" ~~is/means the same as~~ defined ~~by/in~~ KRS 500.080(4). ~~;~~

(5) "Physical injury" ~~is/means the same as~~ defined ~~by/in~~ KRS 500.080(13). ~~;~~ ~~and~~

(6) "Serious physical injury" ~~is/means the same as~~ defined ~~by/in~~ KRS 500.080(15).

(7) "Trauma-informed approach" is defined by KRS 158.4416(1).

(8) "Evidence-based" is defined by 34 C.F.R.77.1.

Section 2. ~~A~~ ~~No~~ student with an Individual Education Program (IEP) pursuant to 707 KAR Chapter 1, 504 plan pursuant to Section 504 of the Rehabilitation Act of 1973, or identified as a homeless or foster care youth pursuant to 704 KAR 7:090 shall **not** be subjected to corporal punishment.

Section 3.

(1) **Except for a local board of education that prohibits corporal punishment pursuant to Section 7(1)(a) of this administrative regulation,** within the first five (5) days of enrollment each school year, the school shall request written consent from the legal guardian of each student to use corporal punishment as a behavior intervention for their child. The written consent shall inform the legal guardian of how to access the student code of conduct, describe the code of conduct violations that may result in corporal punishment, and notify the legal guardian that consent may be withdrawn at any point during the school year. Absent valid written consent signed by the legal guardian, corporal punishment shall not be administered.

(2) Before administering corporal punishment to a pupil, the school shall contact the child's legal guardian to provide prior notification and receive affirmative verbal consent.

Section 4. ~~Notwithstanding the provisions of KRS 503.070 and KRS 503.050,~~ Prior to administering corporal punishment to a pupil, the school shall attempt to remedy

problematic behavior through the use of evidence-based practices consistent with a trauma-informed approach~~other non-physical means~~.

Section 5.

(1) Corporal punishment may only be administered by the Principal or Assistant Principal. Corporal punishment shall only be administered in the presence of at least one ~~(1)~~ additional certified staff member who is the same gender as the student.

(2) Corporal punishment shall not be administered in a location where another student, staff member other than those described in subsection (1) of this section, or adult visitor to the school can see or hear the corporal punishment.

~~(3) (2) A~~ ~~(No)~~ staff member shall **not** be compelled to administer or witness corporal punishment.

Section 6.

(1) After administering corporal punishment, the school shall ensure that the student receives a minimum of thirty (30) minutes of counseling provided by the school's guidance counselor, school social worker, school psychologist, or other qualified mental health professional no later than the end of the next school day.

(2) Each incidence of corporal punishment ~~shall~~~~must~~ be recorded in the student information system. Schools shall report:

(a) The time and date ~~which~~ the punishment was administered;

(b) The name and position of the individual who administered the punishment;

(c) The names and positions of any witnesses to the punishment;

(d) The time and date of the prior consent required under Section ~~3~~**of this administrative regulation;**

(e) The name and relationship of the individual providing consent under Section ~~3~~**of this administrative regulation;**

(f) The behavioral interventions deployed prior to corporal punishment as required under Section ~~4~~**of this administrative regulation;** and

(g) The time and date of the student counseling appointment required under Section ~~5~~**of this administrative regulation.**

Section 7.

(1) Each local board of education shall adopt a policy that either:

(a) Prohibits the use of corporal punishment in the district; or

(b) Allows the use of corporal punishment in the district.

(2) If the local board of education adopts a policy allowing the use of corporal punishment, its policy shall:

(a) Define the circumstances under which corporal punishment may be deployed which shall not exceed the justification included in KRS 503.110;

(b) Define the procedures for deploying ~~corporal~~~~such~~ punishment;

(c) Define the tool or instrument to be used when administering corporal punishment and include a prohibition on the use of dangerous instruments or deadly weapons;

(d) Define the limits on corporal punishment and ~~ensure~~~~ensures~~ that corporal punishment ~~shall~~~~does~~ not result in physical injury or serious physical injury; and

(e) Define the procedures for documenting and reporting ~~corporal~~~~such~~ punishment.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Commissioner

LU YOUNG, Chair

APPROVED BY AGENCY: March 18, 2022

FILED WITH LRC: April 14, 2022 at 11:30 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 503.110 allows for the use of physical force upon a student when the school “believes that the force used is necessary to promote the welfare of a minor... or maintain discipline in a school, class, or other group.” This practice is commonly referred to as corporal punishment. This regulation seeks to establish minimum requirements for the use of corporal punishment including a requirement to attain parental consent prior to use, requirements for the deployment of additional behavior management best practices and supports, and requirements for documentation and reporting.

(b) The necessity of this administrative regulation:

The American Academy of Child and Adolescent Psychiatry states that corporal punishment may be harmful to children. As such, this regulation seeks to reduce the potential for harm by providing foundational requirements, requiring parental notification and consent, and establishing reporting procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070, 156.160, and 158.444.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation creates uniformity in the deployment of corporal punishment across the Commonwealth. It seeks to protect the public’s right to provide input by mandating that local school districts adopt policies related to corporal punishment. Additionally, it seeks to protect the parent’s rights by requiring prior notification and consent. Finally, the regulation establishes minimum reporting requirements so that relevant administrative bodies and the public can better understand how corporal punishment is being deployed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This is a new regulation.

(b) The necessity of the amendment to this administrative regulation:

This is a new regulation.

(c) How the amendment conforms to the content of the authorizing statutes:

This is a new regulation.

(d) How the amendment will assist in the effective administration of the statutes:

This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will impact approximately thirty five public schools in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Districts will be required to adopt corporal punishment policies and report details of corporal punishment in the student information system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There should be no additional cost to districts as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Schools and districts will have uniform corporal punishment procedures and the public will have greater access to detailed information about the use of corporal punishment in Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There is no additional cost to administer this program.

(b) On a continuing basis:

KDE incurs an ongoing cost of staff and resources already in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Enforcement of this regulation is funded by the KDE General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This amendment does not establish or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Local education agencies and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 156.070, KRS 156.160, KRS 158.444

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

No additional expenditures are anticipated because of this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue.

(c) How much will it cost to administer this program for the first year?

There is no initial cost to administer this program.

(d) How much will it cost to administer this program for subsequent years?

KDE incurs an ongoing cost of staff and resources already in place.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):N/A

Expenditures (+/-):NA

Other Explanation:

N/A