

STATEMENT OF EMERGENCY

701 KAR 5:170E.

This emergency administrative regulation is being promulgated to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2025 Ordinary Session of the Kentucky General Assembly, Senate Bill (SB) 207 was passed and became law. Codified at KRS 156.161, the legislation prescribes a new procedure for local boards of education to submit requests to the Kentucky Board of Education to waive statutes or administrative regulations. KRS 156.161(10) provides that the Kentucky Board of Education "shall promulgate administrative regulations in accordance with KRS Chapter 13A to adopt a standardized waiver request form and establish any procedures for processing waiver requests in compliance with this section." This emergency administrative regulation is being promulgated to ensure that local boards of education have immediate access to the forms and procedures for seeking waivers of statutes and administrative regulations from the Kentucky Board of Education. Given the repeal of KRS 156.160(2) contained within SB 207, without this emergency administrative regulation, the Kentucky Board of Education will have no means to waive administrative regulations upon request of a local board of education until an ordinary administrative regulation becomes effective. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

SHARON PORTER ROBINSON, Chair

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(New Emergency Administrative Regulation)

701 KAR 5:170E. Waiver requests.

RELATES TO: KRS 156.070, 156.160, 156.161, 157.360, 158.854

STATUTORY AUTHORITY: KRS 156.070, 156.161

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education to manage and control the common schools, including prescribing administrative regulations the Kentucky Board of Education deems necessary for the efficient management, control and operation of public schools. KRS 156.161 authorizes the Kentucky Board of Education to promulgate administrative regulations to establish procedures for processing requests to waive statutes or administrative regulations pursuant to KRS 156.161. This administrative regulation sets forth the procedures for processing requests to waive statutes or administrative regulations pursuant to KRS 156.161.

Section 1. Definitions.

- (1) "Amendment application" means a waiver request wherein a school district board of education seeks to amend the waiver of a statute or administrative regulation previously granted to the requestor by the Kentucky Board of Education and still in effect as of the date of the waiver request.
- (2) "Commissioner" means the commissioner of the department.
- (3) "Department" means the Kentucky Department of Education.
- (4) "New application" means a waiver request wherein a school district board of education seeks a waiver of a statute or administrative regulation not previously granted to the requestor by the Kentucky Board of Education, or previously granted to the requestor by the Kentucky Board of Education but expired or terminated as of the date of the waiver request.
- (5) "Renewal application" means a waiver request wherein a school district board of education seeks renewal of a waiver of a statute or administrative regulation previously granted to the requestor by the Kentucky Board of Education and still in effect as of the date of the waiver request.
- (6) "Special education maximum class size application" means a waiver request wherein a superintendent or school-based decision making council seeks a waiver of the special education class sizes prescribed in 707 KAR 1:350, or to renew a waiver of the special education class sizes prescribed in 707 KAR 1:350 previously granted to the requestor by the Kentucky Board of Education and still in effect as of the date of the waiver request.
- (7) "Waiver request" means a request to waive statutes or administrative regulations made pursuant to KRS 156.161 and this administrative regulation.

Section 2. Waiver Request Application.

- (1) A waiver request shall be in the form of a new application, a renewal application, an amendment application, or a special education maximum class size application, and shall comply with the requirements of this section.
- (2) A waiver request shall be submitted by U.S. mail to the department with the phrase "Attn: Waiver Request" in the address. The Commissioner may allow email submission of waiver requests at his or her discretion to an email address selected by the Commissioner.

- (3) A new application shall include an Application Cover Sheet (E), and attached thereto a Specific Waiver Request Form for each statute or administrative regulation from which the requestor seeks a waiver.
- (4) A renewal application shall include an Application Cover Sheet (E), and attached thereto a Renewal Application Form (E).
- (5) An amendment application shall include an Application Cover Sheet (E), and attached thereto an Amendment Request Form (E).
- (6) A special education maximum class size application shall include a Special Education Maximum Class Size Request Form.
- (7) A waiver request shall be deemed incomplete if:
 - (a) The request fails to include all forms required for the waiver request as provided in subsections (3) – (6) of this section;
 - (b) The forms required for the waiver request as provided in subsections (3) – (6) of this section contain missing or incomplete responses; or
 - (c) Attachments prescribed within the forms required for the waiver request as provided in subsections (3) – (6) of this section are missing or incomplete.

Section 3. Receipt and Technical Review.

- (1) Upon receipt of a waiver request, the department shall:
 - (a) Notate the date the department received the request;
 - (b) Assign a number to identify the request;
 - (c) Notify the Kentucky Board of Education that the waiver request should appear on its next regular meeting for review and decision; and
 - (d) Perform a technical review of the waiver request as set forth in subsection (2) of this section.
- (2) The department shall perform the following technical review for each waiver request received:
 - (a) Calculate the number of calendar days from the date noted on the waiver request pursuant to subsection (1)(a) of this section and the next regular meeting of the Kentucky Board of Education following that date;
 - (b) Determine whether the waiver request seeks waiver of any statute or administrative regulation set forth in KRS 156.161(1)(a)-(j); and
 - (c) Determine whether the waiver request meets the requirements of KRS 156.161(2) and Section 2 of this administrative regulation.
- (3) Following the technical review performed pursuant to subsection (2) of this section, the department shall notify the party submitting the waiver request of the following:
 - (a) The date the department received the waiver request;
 - (b) The number assigned by the department to identify the waiver request;
 - (c) The Kentucky Board of Education meeting date when the waiver request will be acted upon;
 - (d) If the number of calendar days calculated pursuant to subsection (2)(a) of this section is less than forty-five (45), that denial of the waiver request shall be recommended to the Kentucky Board of Education due to insufficient time to conduct a meaningful review of the request, unless the Commissioner determines the waiver request is narrowly tailored to address an emergency situation requiring timely action by the Kentucky Board of Education;
 - (e) If the waiver request seeks waiver of any statute or administrative regulation set forth in KRS 156.161(1)(a)-(j), that denial of those portions of the request shall be recommended to the Kentucky Board of Education;
 - (f) If the waiver request does not meet the requirements of KRS 156.161(2) or Section 2 of this administrative regulation, that denial of the request shall be recommended to the Kentucky Board of Education, along with a description of how the request does not

meet the requirements of KRS 156.161(2) or Section 2 of this administrative regulation;

(g) Instructions on how the party submitting the waiver request may voluntarily withdraw its request from Kentucky Board of Education review prior to the date set forth in paragraph (c) of this subsection; and

(h) Instructions on how the party submitting the waiver request may request that the Kentucky Board of Education act upon the request on a date different from that set forth in paragraph (c) of this subsection.

(4) Following the notice provided in subsection (3) of this section, the department shall take the following steps in processing the waiver request:

(a) If the waiver request is recommended to the Kentucky Board of Education for denial as set forth in paragraph (d) or (f) of subsection (3) of this section, then such recommendation shall be forwarded to the Kentucky Board of Education and the department shall terminate further review of the waiver request pursuant to this administrative regulation;

(b) If portions of the waiver request are recommended to the Kentucky Board of Education for denial as set forth in paragraph (e) of subsection (3) of this section, then such recommendation shall be forwarded to the Kentucky Board of Education and the department shall terminate further review of those portions of the waiver request pursuant to this administrative regulation; and

(c) Any waiver request, or portion thereof, not recommended for denial to the Kentucky Board of Education as set forth in paragraphs (d) – (f) of subsection (3) of this section shall proceed to substantive review pursuant to Section 4 of this administrative regulation.

Section 4. Substantive Review.

(1) A waiver request, or portion thereof, that proceeds to substantive review pursuant to subsection (4)(c) of Section 3 of this administrative regulation shall be reviewed and recommended by the Commissioner to the Kentucky Board of Education for approval or denial following such review.

(2) In reviewing and evaluating the waiver request for a recommendation pursuant to subsection (1) of this section, the Commissioner shall consider the following factors:

(a) The entirety of the waiver request as set forth in subsections (3) – (6) of Section 2 of this administrative regulation;

(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 special education maximum class size applications, any additional factors to be considered pursuant to 707 KAR 1:350 for waiver or exemption of special education maximum class sizes.

(3) Following review and evaluation as provided in subsection (2) of this section, the Commissioner shall recommend approval of a waiver request, or portion thereof, only if he or she 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.

Section 5. Notification of Kentucky Board of Education Action.

(1) Within ten (10) business days following action by the Kentucky Board of Education on any waiver request, the department shall notify the requesting party of:

- (a) The action taken by the Kentucky Board of Education on the waiver request; and
- (b) If any portion of the waiver request was granted:
 - 1. The specific statutes or administrative regulations waived;
 - 2. The schools or programs to which the waiver applies;
 - 3. The expiration date of the waiver granted;
 - 4. The process to file a renewal application to avoid expiration of the waiver granted; and
 - 5. The process to file an amendment application to seek future amendments to the waiver granted.

(2) The department shall maintain a list of waiver requests granted by the Kentucky Board of Education. The department shall remove from the list any waivers that are no longer effective due to expiration or termination.

Section 6. Termination of Waiver.

(1) A party to whom a waiver request is granted may request voluntary termination of the waiver by submitting an amendment application using the procedures set forth in Section 2 of this administrative regulation.

(2) The Kentucky Board of Education may terminate a waiver it previously granted as provided in KRS 156.161(9). No less than twenty (20) calendar days prior to a meeting of the Kentucky Board of Education to consider termination of a waiver pursuant to this subsection, the department shall provide written notice to the party to whom the waiver was granted of the following:

- (a) That the Kentucky Board of Education will consider termination of a previously granted waiver as provided in KRS 156.161(9);
- (b) The Kentucky Board of Education meeting date when such consideration and action shall occur;
- (c) The reasons for potential termination of the previously granted waiver along with copies of any documents that will be considered by the Kentucky Board of Education as evidence in support of the reasons for potential termination; and
- (d) That any written response of the party to whom the waiver was granted, received by the department within fifteen (15) calendar days following the date of the notice, shall be provided to the Kentucky Board of Education for its consideration prior to any action to terminate a previously granted waiver as provided in KRS 156.161(9).

(3) Within five (5) business days following any action by the Kentucky Board of Education pursuant to subsection (2) of this section, the department shall provide written notice to the party granted a waiver subject to termination action of the outcome of the Kentucky Board of Education's action pursuant to KRS 156.161(9).

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Application Cover Sheet (E)", June 2025;
- (b) "Specific Waiver Request Form", June 2025;
- (c) "Renewal Application Form (E)", June 2025;

(d) "Amendment Request Form (E)", June 2025; and

(e) "Special Education Maximum Class Size Request Form", June 2025.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Department of Education, 300 Sower Blvd, 5th Floor, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m. eastern time. This material may also be accessed on the Kentucky Department of Education website at: <https://www.education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>.

COMPILER'S NOTE: 2025 RS HB 6, enacted by the General Assembly on March 27, 2025, altered the information to be provided at the time an administrative regulation is filed. Aside from formatting changes necessary to upload the regulation into the LRC's publication application, this regulation has been published as submitted by the agency.

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).

DR. ROBBIE FLETCHER, Commissioner

SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: August 12, 2025

FILED WITH LRC: August 13, 2025 at 2:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 24, 2025, at 10 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.