

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
Kentucky Board of Education

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Emergency Administrative Regulation)

5 701 KAR 5:170E. Waiver Requests.

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

7 STATUTORY AUTHORITY: KRS 156.070, 156.161.

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board

9 of Education to manage and control the common schools, including prescribing administrative

10 regulations the Kentucky Board of Education deems necessary for the efficient management,

11 control and operation of public schools. KRS 156.161 authorizes the Kentucky Board of

12 Education to promulgate administrative regulations to establish procedures for processing

13 requests to waive statutes or administrative regulations pursuant to KRS 156.161. This

14 administrative regulation sets forth the procedures for processing requests to waive statutes or

15 administrative regulations pursuant to KRS 156.161.

16 Section 1. Definitions. (1) “Amendment application” means a waiver request wherein a school

17 district board of education seeks to amend the waiver of a statute or administrative regulation

18 previously granted to the requestor by the Kentucky Board of Education and still in effect as of

19 the date of the waiver request.

20 (2) “Commissioner” means the commissioner of the department.

1 (3) “Department” means the Kentucky Department of Education.

2 (4) “New application” means a waiver request wherein a school district board of education seeks
3 a waiver of a statute or administrative regulation not previously granted to the requestor by the
4 Kentucky Board of Education, or previously granted to the requestor by the Kentucky Board of
5 Education but expired or terminated as of the date of the waiver request.

6 (5) “Renewal application” means a waiver request wherein a school district board of education
7 seeks renewal of a waiver of a statute or administrative regulation previously granted to the
8 requestor by the Kentucky Board of Education and still in effect as of the date of the waiver
9 request.

10 (6) “Special education maximum class size application” means a waiver request wherein a
11 superintendent or school based decision making council seeks a waiver of the special education
12 class sizes prescribed in 707 KAR 1:350, or to renew a waiver of the special education class
13 sizes prescribed in 707 KAR 1:350 previously granted to the requestor by the Kentucky Board of
14 Education and still in effect as of the date of the waiver request.

15 (7) “Waiver request” means a request to waive statutes or administrative regulations made
16 pursuant to KRS 156.161 and this administrative regulation.

17 Section 2. Waiver Request Application. (1) A waiver request shall be in the form of a new
18 application, a renewal application, an amendment application, or a special education maximum
19 class size application, and shall comply with the requirements of this section.

20 (2) A waiver request shall be submitted by U.S. mail to the department with the phrase “Attn:
21 Waiver Request” in the address. The Commissioner may allow email submission of waiver
22 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;

1 (f) If the waiver request does not meet the requirements of KRS 156.161(2) or Section 2 of this
2 administrative regulation, that denial of the request shall be recommended to the Kentucky Board
3 of Education, along with a description of how the request does not meet the requirements of KRS
4 156.161(2) or Section 2 of this administrative regulation;

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

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

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

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

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

21 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>.

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).

(Date)

Dr. Robbie Fletcher
Commissioner of Education

(Date)

Sharon Porter Robinson, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 24, 2025, at 10am 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, KY 40601, phone 502-564-4474, fax 502-564-9321, email: regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

702 KAR 5:170E

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

Subject Headings: Board of Education; Waivers; Forms and Applications.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for processing requests to waive statutes or administrative regulations pursuant to KRS 156.161.

(b) The necessity of this administrative regulation: KRS 156.161 authorizes the Kentucky Board of Education to promulgate administrative regulations to establish the procedures for processing requests to waive statutes or administrative regulations. Without this regulation, no procedure will exist for local boards of education to utilize KRS 156.161 to request that the Kentucky Board of Education waive statutes or administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.161 specifically authorizes the Kentucky Board of Education to promulgate administrative regulations to establish the procedures for processing requests to waive statutes or administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures for processing requests to waive statutes or administrative regulations pursuant to KRS 156.161.

(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 administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? Yes. See 2025 Ky. Acts ch. 113, sec. 1.

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

171 public school districts.

(5) 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: The Kentucky Department of Education must follow the procedures listed in the regulation for review, processing, and recommendation to the Kentucky Board of Education for any waiver request received from a local board of education. Local boards of education are not required to take any action as a result of the administrative regulation. However, if they choose to apply to the Kentucky Board of Education for a waiver pursuant to KRS 156.161, they must utilize the forms and comply with the procedures set forth in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of Education are estimated to be minimal. Costs to local boards of education are in the form of staff time completing required forms if the school district chooses to pursue a waiver request. These costs are estimated to be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Department of Education will be guided by clear procedures that are uniform to all applicants. Local school boards will have access to fillable forms and instructions to guide them through the process of requesting a waiver pursuant to KRS 156.161.

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

(a) Initially: Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of Education are estimated to be minimal.

(b) On a continuing basis: Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of Education are estimated to be minimal.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

(8) 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: The administrative regulation does not establish or increase any fees. Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of

Education are estimated to be minimal. If this changes in the future, the Kentucky Department of Education will explore the need for additional funding.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(10) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. The regulation applies uniformly.

FISCAL IMPACT STATEMENT

701 KAR 5:170E

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 156.070, 156.161.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: This administrative regulation is expressly authorized by KRS 156.161.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Education and Kentucky Department of Education.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of Education are estimated to be minimal.

For subsequent years: Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of Education are estimated to be minimal.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: This regulation is not expected to result in cost savings to the Kentucky Department of Education.

For subsequent years: This regulation is not expected to result in cost savings to the Kentucky Department of Education.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local school districts.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: Costs to local school districts are in the form of staff time completing required forms if the school district chooses to pursue a waiver request. These costs are estimated to be minimal.

For subsequent years: Costs to local school districts are in the form of staff time completing required forms if the school district chooses to pursue a waiver request. These costs are estimated to be minimal.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: Local school districts may realize cost savings depending on the specific waivers requests and granted.

For subsequent years: Local school districts may realize cost savings depending on the specific waivers requests and granted.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year: Not applicable.

For subsequent years: Not applicable.

2. Revenues:

For the first year: Not applicable.

For subsequent years: Not applicable.

3. Cost Savings:

For the first year: Not applicable.

For subsequent years: Not applicable.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of Education are estimated to be minimal. Costs to local school districts are in the form of staff time completing required forms if the school district chooses to pursue a waiver request. These costs are estimated to be minimal. This regulation is not expected to generate revenue. Local school districts may realize cost savings depending on the specific waivers requests and granted.

(b) Methodology and resources used to reach this conclusion: The agency considered the procedures called for by this administrative regulation, as well as historical volume of requests from school district to waive administrative regulations.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(13): This regulation will not have a “major economic impact” as defined by KRS 13A.010(13).

(b) The methodology and resources used to reach this conclusion: As previously stated, local boards of education are not required to take any action as a result of the administrative regulation. However, if they choose to apply to the Kentucky Board of Education for a waiver pursuant to KRS 156.161, they must utilize the forms and comply with the procedures set forth

in the regulation. Costs to local school districts are in the form of staff time completing required forms if the school district chooses to pursue a waiver request. These costs are estimated to be minimal. Costs to the Kentucky Department of Education are in the form of staff time processing waiver requests. These costs depend on the volume of requests received. At this time, costs to the Kentucky Department of Education are estimated to be minimal based on historical volume of requests from school districts to waive administrative regulations.

Summary Page - Incorporation by Reference

701 KAR 5:170E. Waiver Requests.

The following documents are incorporated by reference:

- (1) “Application Cover Sheet”, June 2025. This 4-page form serves as the required cover sheet for a new waiver application, a renewal application, and an amendment application. The form collects information uniform to all three types of waiver applications and provides applicants with notice of various requirements of KRS 156.161 and this administrative regulation.
- (2) “Specific Waiver Request Form”, June 2025. This 2-page form is attached to the Application Cover Sheet in the case of a new waiver application for each statute or administrative regulation that an applicant requests be waived. This form collects information required by KRS 156.161 and this administrative regulation for evaluating each request to waive statute or administrative regulation.
- (3) “Renewal Application Request Form”, June 2025. This 2-page form is attached to the Application Cover Sheet in the case of a request to renew a previously granted waiver from statutes or administrative regulations. This form collects information required by KRS 156.161 and this administrative regulation for evaluating whether or not to grant a renewal of a previously granted waiver from statute or administrative regulation.
- (4) “Amendment Request Form”, June 2025. This 3-page form is attached to the Application Cover Sheet in the case of a request to renew a previously granted waiver from statutes or administrative regulations. This form collects information required by KRS 156.161 and this administrative regulation for evaluating whether or not to grant an amendment to a previously granted waiver from statute or administrative regulation.
- (5) “Special Education Maximum Class Size Request Form”, June 2025. This 4-page form collects information required to request a waiver from the education class sizes and caseloads prescribed in 707 KAR 1:350 as permitted by KRS 157.360(5) and this administrative regulation.