

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:240. Accountability administrative procedures and guidelines.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015~~[No Child Left Behind Act of 2001]~~, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

Section 1. Definitions. (1) "A1" means a school that:

- (a) Is under administrative control of a principal and eligible to establish a school-based decision-making council; and
 - (b) Is not an alternative education program operated by, or as a part of, another school.
- (2) "Alternative education program" is defined by KRS 160.380(1)(a).
- (3) "Full Academic Year" means 100 or more instructional days of enrollment within the school year.

Section 2. Assigning Students for School and District Accountability. (1)(a) A student enrolled in an A1 school for a full academic year shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes. This shall include state agency children or other students who have been enrolled in an A1 school by any authority.

(b) A student qualifying as an early graduate based on criteria defined in 704 KAR 3:305 shall be included in the school's accountability calculation in the year in which the student graduates whether or not the student has a full academic year of enrollment.

(2) A student enrolled in an A1 school and attending an alternative education program during the year as a result of local school district policies or procedures shall be counted in the accountability membership of the A1 school and shall be attributed to the A1 school for accountability purposes if the student's combined enrollment in the A1 school and alternative education program is a full academic year.

(3) A student enrolled in an alternative education program for a full academic year as a result of local school district policies or procedures without any enrollment in an A1 school during the same year shall be attributed to the accountability of the district that the student would have attended if not enrolled in the alternative education program.

(4) A student not enrolled in any A1 school or an alternative education program for a full academic year, but enrolled in a district for a full academic year, shall be assigned to the district for accountability purposes.

(5) The Department of Education shall monitor alternative school placements. If evidence indicates a district is inappropriately placing students into alternative programs to avoid inclusion in accountability, it shall be further investigated by the Department of Education.

Section 3. Assigning Students for State Accountability. (1) Students enrolled in alternative education programs, and not attributed to an A1 school or district, shall be aggregated into a state level accountability report.

(2) If a student, before completing a full academic year in a school or district as provided in Section 2 of this administrative regulation, is enrolled in an alternative education program by a court, a governmental agency other than a Kentucky public school, or Kentucky school district, the student shall be accountable to the state.

Section 4. Inclusion of Schools in Accountability. (1) All A1 schools shall receive annual accountability classifications as established in 703 KAR 5:270~~[703 KAR 5:200, Section 4(6)(b)]~~, for the state's assessment and accountability system~~[and shall receive recognition or support as provided by 703 KAR 5:225]~~.

(2)(a) For reporting purposes, all alternative education programs shall receive annual accountability reports based on tested students.

(b) Reports for alternative education programs shall be separate from the A1 school accountability reporting.

(c) The alternative education program reports shall outline the unique features and characteristics of the alternative education program and the appropriate uses and limitations of the data. ~~[(d) State support and recognition as provided in 703 KAR 5:225 may apply to an alternative education program at the discretion of the Commissioner of Education if resources are available.]~~ Section Section 5. Standard Grade Configuration for Accountability. (1) Accountable grade level configurations shall be elementary, middle, or high school.

(a) Elementary shall include any configuration of grades K-5 or K-6.

(b) Middle school shall include any configuration of grades 5-8 or 6-8.

(c) High school shall include any configuration of grades 9-12.

(2) An A1 school or an alternative education program shall fall into one (1), two (2), or three (3) grade level configurations for accountability reporting.

Section 6. Reporting of Schools with Changed School Service Area. (1)(a) For reporting purposes, a school's past data trend shall be removed from public reporting if a school has a significant change in its stable population.

(b) A school shall be considered to have a stable population, if as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, the population of the school remains at sixty (60) percent or higher of its original students from the previous year in the accountability grades.

(c) To determine if the population is stable, the number of students in the stable population shall be divided by the total number of students in the grades included in the accountability calculations.

1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be reported.

2. If the stable population is less than sixty (60) percent, the school's past trend data shall not be reported.

(2) A school district shall notify the Department of Education of any school that will have~~has~~ an unstable population compared to the prior year~~years~~ by June 30~~October 1~~.

Section 7. Data Review and School or District Appeal of Accountability Classifications. (1) A written request for a data review shall be submitted to the Department of Education within ten (10) days after the Department of Education officially releases the final accountability classifi-

cations as established in ~~703 KAR 5:270~~~~[703 KAR 5:200, Section 4(6)(b)]~~, to the public.

(2) A written appeal of a final accountability classification shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the accountability classifications. The appeal of a final classification shall:

(a) Identify clearly the basis for the wrongful effect on the calculations used to place a school into a classification; and

(b) Detail the requested adjustment to be made to the calculations used to place a school into a classification.

(3)(a) The request for an appeal for a school accountability classification shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the local board of education.

(b) The request for an appeal for a district accountability classification shall be signed by the superintendent upon approval of the local board of education.

(4)(a) Department of Education staff shall review the request for an appeal against the standards set forth in KRS 158.6455 ~~(6)~~~~[(8)]~~.

(b) A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor.

(c) If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 8. Student Participation in State Assessments. (1)(a) All students enrolled shall participate at the appropriate grade level for the state-required assessments in grades 3-~~12~~~~[8, the college readiness tests, and the writing on demand tests]~~.

(b) For assessment and accountability purposes, the state shall not use the primary level designator and all students in grades 3-12 shall be assigned a single grade level. The assigned grade level shall determine the state tests to administer.

(c) Exceptions for testing shall be made for medical-exempted students or extraordinary circumstances~~[and foreign exchange students]~~.

(d) Students categorized as English Learners (EL) shall follow testing guidelines set forth by the federal Every Student Succeeds Act of 2015~~[No Child Left Behind Act of 2001]~~, 20 U.S.C. secs. 6301 et seq., or its successor. ~~[(2) High school students shall participate in the state-required end of course testing program after completing the appropriate course linked to the end of course test.]~~

~~[(3)]~~ For the state assessments in grades 3-~~12~~~~[8, the college readiness tests, and the writing on demand tests]~~, a school shall test all students during the test window that are enrolled in each accountability grade on the first day of the school's testing window and shall complete a roster in the electronic application provided by the Department of Education. ~~[(4) For the end-of-course examination, the school shall test all students enrolled at the completion of the course associated with the state-required end-of-course examination and shall complete a roster in the electronic application provided by the Department of Education.]~~

~~[(5)]~~ A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all accountability calculations. ~~[A high school student who re-takes a course attached to an end-of-course examination shall take the end-of-course examination at the end of the appropriate~~

coursework.]

~~(4)~~[(6)] A student who is suspended or expelled but continues to receive instructional services required under KRS 158.150 shall participate in the state-required assessments.

Section 9. Students Not Participating in State-Required Assessments. (1) If a student does not participate in state-required assessments, the school at which the student was enrolled on the first day of the testing window shall include the student in the roster in the electronic application provided by the Department of Education.

(2) A student who does not take the state assessments and does not qualify for approved exempted status shall be assigned the lowest reportable score on the appropriate test for accountability calculations.

(3) A student reaching the age of twenty-one (21) years of age who no longer generates state funding under Support Education Excellence in Kentucky shall not be required to participate in state-required assessments.

(4) A student who is expelled and legally not provided instructional services under the standards established in KRS 158.150 shall not be considered to be enrolled for a full academic year, and shall not be included in accountability calculations.

(5) If a student has been expelled or suspended at some point during a year and is enrolled but does not complete the state-required assessment, the student shall be included in the accountability calculation.

(6)(a) If participation in the state-required assessment would jeopardize a student's physical, mental, or emotional well-being, a school or district shall submit a request for medical exemption, which shall be subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from the assessments.

(b) An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state-required assessment and accountability requirements.

(c) A student with an approved medical exemption or extraordinary circumstance shall be excluded from state-required assessments and state and federal accountability calculations.

~~[(7) A foreign exchange student may be assessed with state-required assessments, but the foreign exchange student scores shall not be included in the accountability calculations.]~~

~~(7)~~[(8)] If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from accountability calculations.

Section 10. Required Participation in the National Assessment of Educational Progress (NAEP) and State-Required Field Testing. (1) If a school is selected by the U.S. Department of Education or its designated contractors to participate in NAEP testing, the school shall participate fully.

(2) If a school is selected by the Department of Education to participate in field testing for state assessment purposes, the school shall participate fully.

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).

WAYNE D. LEWIS, Commissioner

HAL HEINER, Chairperson

APPROVED BY AGENCY: August 12, 2019

FILED WITH LRC: August 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 21, 2019, at 10:00 a.m.. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 until October 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

(b) The necessity of this administrative regulation: KRS 158.6453(3)(a) and 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq, or its successor; and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides administrative procedures and guidelines for the state assessment and accountability system for Kentucky public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and guidance to ensure consistent implementation of the state assessment and accountability system.

(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: With the new accountability regulation, 703 KAR 5:270, in effect, it is important to amend this regulation so they both align. It also is important to align the regulation to both state and federal requirements. A few issues of miss-alignment within the regulation are: the regulation references 703 KAR 5:200, Next generation learners, which is the old accountability regulation that has been recently repealed; the regulation references 703 KAR 5:225, Continuous improvement planning for schools and districts, which has been amended and no longer applies to this regulation; Kentucky no longer uses End-of-Course (EOC) assessments in high school for accountability, Kentucky moved to an End-of-Span assessment that is administered at grade 10 (reading and mathematics) and grade 11 (science, social studies and writing); and, the regulation includes medical exemptions, but does not include extraordinary circumstances for students to be exempted from testing.

Additionally, the regulation currently states that foreign exchange students may be assessed with state required assessments, but the foreign exchange students shall not be included in the accountability calculations. During the review of Kentucky's initial consolidated State plan in 2018, the United States Department of Education informed Kentucky that its policy for foreign exchange students must be modified. All foreign exchange students who have been enrolled for a full academic year (i.e. 100 days of enrollment) shall be tested and included in accountability.

(b) The necessity of the amendment to this administrative regulation: The amendment provides specific improvements to procedures and guidelines for the state assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability as required by KRS 158.6453 and KRS 158.6455.

(c) How the amendment conforms to the content of the authorizing statute: This amendment provides specific details and guidance regarding implementation of the state assessment and accountability system in Kentucky public schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific procedures and guidance to ensure consistent implementation of accountability in Kentucky schools and districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(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: The amendment will impact schools and districts and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of accountability by schools and districts as required by KRS 158.6453.

(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, schools and districts shall apply consistently the specific procedures and guidance in the state assessment and accountability system. Minimal action required by schools and districts as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the schools, districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will consistently apply procedures and guidance in the assessment and accountability system.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

(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 will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indi-

rectly increases any fees: This administrative regulation does not establish fees or directly 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 school 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? School districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455

(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.

(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? None.

(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? None.

(c) How much will it cost to administer this program for the first year? Amendment adds no additional costs.

(d) How much will it cost to administer this program for subsequent years? Amendment adds no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Regulation does not generate revenue or establish fees.