

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

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

6 RELATES TO: KRS 36.042, 158.150, 158.6451, 158.6453, 158.6455

7 STATUTORY AUTHORITY: KRS 158.6453, 158.6455

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS

9 158.6455(1[2])(a) require the Kentucky Board of Education to promulgate administrative

10 regulations to create and implement a balanced statewide assessment and accountability

11 program that measures the achievement of students, schools, and districts; complies with the

12 federal Every Student Succeeds Act of 2015, 20 U.S.C. 6301 et seq.; and ensures

13 accountability. This administrative regulation establishes administrative procedures and

14 guidelines for Kentucky's assessment and accountability program.

15 Section 1. Definitions. (1) "Accountable School [A4]" means a school that is:

16 (a) Under administrative control of a principal and eligible to establish a school-based decision-
17 making council; and

18 (b) Not an alternative education program operated by, or as a part of, another school.

19 (2) "Alternative education program" is defined by KRS 160.380(1)(b).

20 (3) "Full Academic Year" means 100 or more instructional days of enrollment within the school
21 year.

1 (4) “Full-Time Enrolled Online, Virtual and Remote Learning Program” is defined by 704 KAR
2 3:535, Section 1(5).

3 Section 2. Assigning Students for School and District Accountability. (1) (a) A student enrolled in
4 an accountable [A4] school for a full academic year shall be counted in the accountability
5 membership of the accountable [A4] school and shall be attributed to the accountable [A4] school
6 for accountability purposes. [~~This shall include state agency children or other students who have~~
7 ~~been enrolled in an A1 school by any authority.~~]

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

11 (2) A student enrolled in an accountable [A4] school and attending an alternative education
12 program during the year as a result of local school district policies or procedures shall be
13 counted in the accountability membership of the accountable [A4] school and shall be
14 attributed to the accountable [A4] school for accountability purposes if the student's combined
15 enrollment in the accountable [A4] school and alternative education program is a full academic
16 year.

17 (3) A student enrolled in an alternative education program for a full academic year as a result
18 of local school district policies or procedures without any enrollment in an accountable [A4]
19 school during the same year shall be attributed to the accountability of the district that the
20 student would have attended if not enrolled in the alternative education program.

21 (4) A student not enrolled in any accountable [A4] school or an alternative education program
22 for a full academic year, but enrolled in a district for a full academic year, shall be assigned to
23 the district for accountability purposes.

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

5 Section 3. Assigning Students for State Accountability. (1) Students [~~enrolled in alternative~~
6 ~~education programs, and~~] not attributed to an accountable [A4] school or a district, shall be
7 aggregated into a state level accountability report.

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

12 Section 4. Inclusion of Schools in Accountability. (1) All accountable [A4] schools shall receive
13 annual accountability classifications as established in 703 KAR 5:270, for the state's
14 assessment and accountability system.

15 (2) (a) For reporting purposes, all alternative education programs and full-time enrolled online,
16 virtual and remote learning programs shall receive annual accountability reports based on
17 tested students.

18 (b) Reports for alternative education programs and full-time enrolled online, virtual and remote
19 learning programs shall be separate from the accountable [A4] school accountability reporting.

20 (c) The alternative education program and full-time enrolled online, virtual and remote learning
21 program reports shall state the unique features and characteristics of each [~~the alternative~~
22 ~~education~~] program and the appropriate uses and limitations of the data.

23 Section 5. Standard Grade Configuration for Accountability. (1) Accountable grade level
24 configurations shall be elementary, middle, or high school.

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

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

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

4 (2) An accountable [A4] school or an alternative education program or a full-time enrolled
5 online, virtual and remote learning program shall fall into one (1), two (2), or three (3) grade
6 level configurations for accountability reporting.

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

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

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

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

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

21 (2) A school district shall notify the Department of Education of any school that will have an
22 unstable population compared to the prior year by June 30.

23 Section 7. Data Review and School or District Appeal of Accountability Classifications. (1) A
24 written request for a data review shall be submitted to the Department of Education within ten

1 (10) days after the Department of Education officially releases the final accountability
2 classifications as established in 703 KAR 5:270, to the public.

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

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

8 (b) State in detail the requested adjustment to be made to the calculations used to place a
9 school into a classification.

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

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

15 (4) (a) Department of Education staff shall review the request for an appeal against the
16 standards established in KRS 158.6455 (6).

17 (b) A committee shall be appointed by the Commissioner of Education to review the pending
18 appeals and make recommendations to the Commissioner of Education as to whether or not to
19 dispute an appeal. The committee may include a teacher, a parent, a principal, a district
20 assessment coordinator, a superintendent, and a counselor.

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

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

4 Section 8. Student Participation in State Assessments. (1) (a) All students enrolled shall
5 participate at the appropriate grade level for the state-required assessments in grades 3-12.

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

9 (c) Exceptions for testing shall be made for medical-exempted students.

10 (d) Students categorized as English Learners (EL) shall follow testing guidelines established
11 by the federal Every Student Succeeds Act of 2015, 20 U.S.C. 6301 et seq.

12 (2) For the state assessments in grades 3-12, a school shall test all students during the test
13 window that are enrolled in each accountability grade on the first day of the school's testing
14 window and shall complete a roster in the electronic application provided by the Department of
15 Education.

16 (3) A student retained in a grade in which state-required assessments are administered shall
17 participate in the assessments for that grade again and shall continue to be included in all
18 accountability calculations.

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

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

- 1 (2) A student who does not take the state assessments and does not qualify for approved
2 exempted status shall be assigned the lowest reportable score on the appropriate test for
3 accountability calculations.
- 4 (3) A student reaching the age of twenty-one (21) years of age who no longer generates state
5 funding under Support Education Excellence in Kentucky shall not be required to participate in
6 state-required assessments.
- 7 (4) A student who is expelled and legally not provided instructional services under the
8 standards established in KRS 158.150 shall not be considered to be enrolled for a full
9 academic year and shall not be included in accountability calculations.
- 10 (5) If a student has been expelled or suspended at some point during a year and is enrolled
11 but does not complete the state-required assessment, the student shall be included in the
12 accountability calculation.
- 13 (6) (a) If participation in the state-required assessment would jeopardize a student's physical,
14 mental, or emotional well-being, a school or district shall submit a request for medical
15 exemption[,] to the Department of Education for approval. The request shall state [which shall
16 ~~be subject to the approval of the Department of Education and that states]~~ the medical
17 condition that warrants exempting a student from the assessments.
- 18 (b) An identified disability or handicapping condition alone shall not be considered sufficient
19 reason for granting a medical exemption to state-required assessment and accountability
20 requirements.
- 21 (c) A student with an approved medical exemption shall be excluded from state-required
22 assessments and ~~[state and federal]~~ accountability calculations.

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

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

8 (2) If a school is selected by the Department of Education to participate in field testing for state
9 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).

(Date)

Robbie Fletcher, Ed.D.
Commissioner of Education

(Date)

Sharon Porter Robinson, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on October 23, 2024 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 October 31, 2024. 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

703 KAR 5:240

Contact Person: Todd Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

(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 KRS 158.6455(1)(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 statutes: This administrative regulation provides administrative procedures and guidelines for the state assessment and accountability system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides administrative procedures and guidelines 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: The amendment adds language regarding students participating in the Full-Time Enrolled Online, Virtual and Remote Learning Program and technical changes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to the establishment of Full-Time Enrolled Online, Virtual and Remote Learning Program as defined in 704 KAR 3:535. Adding new language is necessary to address accountability reporting for these programs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes procedures and guidelines for Kentucky's assessment and accountability program related to Full-Time Enrolled Online, Virtual and Remote Learning Programs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific procedures and guidelines to ensure consistent implementation of accountability in Kentucky schools and districts in regard to Full-Time Enrolled Online, Virtual and Remote Learning Programs.

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

(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 will create accountability reports for Full-Time Enrolled Online, Virtual and Remote Learning Programs. Minimal action is 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 Kentucky's public schools or 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 Kentucky Department of Education and Kentucky's public schools and districts will be able to evaluate the performance of Full-Time Enrolled Online, Virtual and Remote Learning Programs.

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

(a) Initially: Initial costs are not anticipated.

(b) On a continuing basis: The Kentucky Department of Education incurs an ongoing cost of staff and resources in administering the assessment and accountability program. However, there are no additional anticipated costs related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Department of Education's general funds will be used for the implementation and enforcement of this administrative regulation.

(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 indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL IMPACT STATEMENT

703 KAR 5:240

Contact Person: Todd Allen

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(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453(3)(a) and KRS 158.6455(1)(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.

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

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of this administrative regulation.

Revenues: No revenue will be generated as a result of this administrative regulation.

Cost Savings: Cost savings are not expected as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The affected local entities are Kentucky public school districts.

(a) Estimate the following for the first year:

Expenditures: Kentucky's public-school districts will not incur cost.

Revenues: No revenue will be generated as a result of this administrative regulation. Cost

Savings: This regulation will not generate cost savings for Kentucky's public-school districts.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No differences in expenditures, revenues, or cost savings are expected as a result of this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

There are no additional regulated entities not mentioned in questions 2 or 3.

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)
This regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: This regulation will not have an overall negative or adverse economic impact on any identified entities.