

**STATEMENT OF EMERGENCY
702 KAR 1:190E**

Pursuant to KRS 13A.190(1)(a) and KRS 39A.180, the promulgation of this emergency regulation is necessary to meet an imminent threat to public health, safety, or welfare. On March 6, 2020, Governor Andy Beshear signed Executive Order 2020-215 declaring a State of Emergency created by the Novel Coronavirus (COVID-19). In response to this emergency situation, all school districts closed schools to in-person classes beginning the week of March 16, 2020. On March 18, 2020, Governor Beshear entered Executive Order (EO) 2020-243 which encouraged all Kentucky citizens take feasible measures to engage in appropriate social distancing as recommended by the Centers for Disease Control and Prevention (CDC) and Kentucky Department of Public Health. Further, EO 2020-243 ordered the Kentucky Department of Education (KDE) to take steps to ensure appropriate social distancing, including permitting educational requirements to be satisfied through online courses, to the extent practicable. EO 2020-243 suspended statutes requiring physical presence of participants in meetings or interactions. Kentucky public schools remained closed to in-person classes for the remainder of the 2019-2020 school year to prevent the spread of COVID-19. Unfortunately, the COVID-19 emergency will continue to impact school districts during the 2020-2021 school year. While a variety of leave options exist for school district staff who become exposed to COVID-19 and subject to quarantine and medical treatment, these leave options may be inadequate based on the spread of COVID-19 in local communities, or expire prior to the end of the 2020-2021 school year. It is imperative that no district employee who is subject to quarantine or treatment for COVID-19 be compelled to return to work due to a lack of leave time, exposing others to the virus, until they are cleared for return by a medical professional. This emergency administrative regulation is being filed to allow school districts the ability to provide additional emergency leave for school district employees to use for COVID-19 related leave. This emergency regulation is temporary in nature and will expire as provided for in KRS 13A.190. An ordinary administrative regulation would not timely address the need for school district flexibility to grant additional emergency leave for the 2020-2021 school year. The agency may, to the extent necessary, file another emergency regulation upon expiration.

ANDY BESHEAR, Governor
JACQUELINE COLEMAN, Secretary

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Emergency Administrative Regulation)**

702 KAR 1:190E. District employee emergency leave.

EFFECTIVE: August 12, 2020

RELATES TO: KRS 161.152, 160.290.

STATUTORY AUTHORITY: KRS 156.070, 156.160.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides

the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. The governor issued Executive Order 2020-15 declaring a state-wide emergency due to the COVID-19 pandemic. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate the governor's Executive Order 2020-243 temporarily suspending KRS 161.152(2). This administrative regulation establishes a school district's authority to grant paid emergency leave to employees in response to the COVID-19 emergency. This emergency regulation is necessary to address the imminent threat to public health, safety, and welfare; and to protect human health; while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

Section 1. Standard Emergency Leave. (1) Each district board of education may allow each person employed as a full-time employee in the public schools not to exceed three (3) emergency days for the 2020-2021 school year for reasons designated by the district board of education, without loss of salary to the employee and without affecting his or her sick leave.

Section 2. Additional COVID-19 Emergency Leave. (1) Each district board of education may allow each person employed as a full-time or part-time employee in the public schools emergency days for the 2020-2021 school year for leave related to the COVID-19 public health emergency as determined by the local school district, without loss of salary to the employee and without affecting his or her sick leave.

(2) Leave granted pursuant to this section shall be determined based on local school board action, resolution, or procedures enacted by local school districts. Such action, resolution, or procedures shall include, but need not be limited to:

- (a) The number of emergency days authorized for use by employees;
- (b) COVID-19 related reasons for authorization of such leave during the current state of emergency; and
- (c) How leave is credited to and used by employees determined eligible for emergency leave under this section.

(3) Leave granted pursuant to this section shall not accumulate or carry over beyond the 2020-2021 school year and shall not be transferrable to any other classification of paid leave established by KRS 161.155, KRS 161.154, or local school district policy. 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).

KEVIN C. BROWN, Interim Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: August 10, 2020

FILED WITH LRC: August 12, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020, at 10am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) 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 pro-

posed administrative regulation. Written comments shall be accepted through October 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim 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: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the authority for local school districts to grant paid emergency leave to employees, including emergency leave related to the COVID-19 state of emergency.

(b) The necessity of this administrative regulation: While various paid leave options exist for school districts and their employees to utilize in response to the COVID-19 state of emergency, those leave options may not fully address the needs of school districts. For example, expanded leave under the Families First Coronavirus Response Act (FFCRA) expires in December 2020. Furthermore, KRS 156.160 provides the Kentucky Board of Education with authority to promulgate administrative regulations regarding leave for school employees during sickness or quarantine. Providing school districts with authority to grant paid emergency leave to employees for use as a result of the COVID-19 state of emergency is necessary to provide school districts the flexibility to grant and direct leave, as determined by the school district, to prevent the spread of COVID-19. This emergency regulation is necessary to address the imminent threat to public health, safety, and welfare; and to protect human health; while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. The governor issued Executive Order 2020-15 declaring a state-wide emergency due to the COVID-19 pandemic. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate the governor's Executive Order 2020-243 temporarily suspending KRS 161.152(2). This administrative regulation establishes a school district's authority to grant paid emergency leave to employees in response to the COVID-19 emergency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will assist in the effective administration of the statutes by allowing school districts to grant additional paid emergency leave to school employees to prevent the spread of COVID-19, consistent with KRS 156.160 which provide the Kentucky Board of Education with regulatory authority for issues of school employee pay due to illness and quarantine.

(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 not an amendment. This is a new emergency administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment. This is a new emergency administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment. This is a new emergency administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment. This is a new emergency administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation impacts local school districts and their employees.

(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: No actions are necessary to comply with this emergency administrative regulation. If a school district chooses to provide additional emergency leave to school employees, local school board action, resolution, or procedures may be needed for implementing additional emergency leave provisions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new costs to local school districts to comply with this emergency administrative regulation since districts may choose whether or not they will grant additional paid emergency leave. In the event a school district does provide additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The emergency administrative regulation provides school districts with additional flexibility to respond to the COVID-19 state of emergency. Specifically, school districts will have the ability to grant additional paid leave to employees for COVID-19 related absences.

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

(a) Initially: There are no expected additional costs to the agency to implementing the emergency regulation. In the event a school district provides additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(b) On a continuing basis: There are no expected additional costs to the agency to implementing the emergency regulation. In the event a school district provides additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No costs to the agency are anticipated. See response above. In the event incidental costs arise, KDE General Funds will be used.

(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 new fees or funding are necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no direct or indirect fees.

(9) TIERING: Is tiering applied? Tiering was not applied. This administrative regulation applies uniformly 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? Local school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. The governor issued Executive Order 2020-15 declaring a state-wide emergency due to the COVID-19 pandemic. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate the governor's Executive Order 2020-243 temporarily suspending KRS 161.152(2). This administrative regulation establishes a school district's authority to grant paid emergency leave to employees in response to the COVID-19 emergency.

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? This administrative regulation is not expected to generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate any revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not result in any additional costs in order to comply with the regulation. In the event a school district provides additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(d) How much will it cost to administer this program for subsequent years? This emergency administrative regulation is temporary in nature. No administration costs for subsequent years are anticipated.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: