

**STATEMENT OF EMERGENCY
702 KAR 7:125E**

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; to protect human health; and to prevent loss of state funds. 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 2019-20 school year to prevent the spread of COVID-19. This emergency administrative regulation is being filed to allow school districts the ability to provide and to receive funding for a variety of instructional delivery models to meet the needs of their students and communities in light of continued COVID-19 risks and necessary prevention measures. These models include traditional in-person instructional days, periods of complete virtual learning through Non-Traditional Instruction (NTI), and days of blended in-person and NTI delivery. This emergency regulation is temporary in nature and will expire as provided for in 13A.190. An ordinary administrative regulation would not timely address the need for school districts to plan for and deliver instruction 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
(Emergency Amendment)**

702 KAR 7:125E. Pupil attendance.

EFFECTIVE: July 14, 2020

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. ~~[KRS 157.360 bases SEEK funding upon average daily attendance.]~~ KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance

credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate governor's Executive Order 2020-243 suspending KRS 158.070(9), 157.360(2), (9)-(11), (13)(a), and (16), and applicable corresponding provisions of 2020 Reg. Sess. Ky. Acts ch. 92, Part 1,C,1(2) and (4) that allot funding using average daily attendance; and KRS 157.370(3) for the 2020-21 school year for SEEK payments that will occur during the 2021-22 school year. This administrative regulation establishes a uniform method of recording pupil attendance and participation. This emergency amendment is necessary to address the imminent threat to public health, safety, and welfare; to protect human health; and to prevent loss of state funds while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

Section 1. Applicability. Notwithstanding any existing administrative regulation promulgated by the Kentucky Board of Education to the contrary, the provisions of this emergency administrative regulation shall apply to the 2020-21 school year only. To prevent the loss of substantial state funding traditionally based on average daily attendance (ADA) so that districts may utilize a variety of instructional delivery models in response to COVID-19, and pursuant to the authority set forth in Governor's Executive Order 2020-243 suspending KRS 158.070(9), KRS 157.360(2), (9)-(11), (13)(a), and (16), and applicable corresponding provisions of 2020 Reg. Sess. Ky. Acts ch. 92, Part 1,C,1(2) and (4) that allot funding using ADA; and KRS 157.370(3) for the 2020-21 school year for SEEK funding that will occur during the 2021-22 school year.

Section 2. Daily Participation[Attendance]. (1) Daily participation[attendance] of pupils attending in person in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily participation[attendance] of pupils attending in person in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

(a) A parent;

(b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted for participation[in attendance] except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in a[an off-site virtual] non-traditional instructional program. "Non-traditional instruction" means remote instruction in which the student is learning in a location other than the traditional classroom using digital or other alternative methods of learning.

1. For students learning through non-traditional instruction, daily participation shall be measured through the interactions between teachers and students.

2. Daily participation is a measure of student engagement in instruction and not student performance.

3. Daily participation for students learning through non-traditional instruction may be in real time during the school day or at times outside of normal school hours and include at least one of the following:

a. One on one video communication or phone calls between teacher and student (or teacher and parent with smaller children or students with special needs);

b. Group video communication or phone calls between the teacher and a whole class or between a teacher and smaller groups of students within a class;

c. Student time logged into a learning management software system completing assignments; or

d. Submission of paper-based assignments for students in a non-digital, non-traditional setting.

4. Student participation for each school day shall be recorded in the Kentucky Student Information System. Participation for students in non-traditional instructional programs shall be reported for every day the student is in the non-traditional setting but may be recorded on a weekly schedule.

5. Districts shall work with students and families to engage each student and promote participation in accordance with KRS Kentucky Chapter 159, applicable administrative regulations, and local board policies whether instruction is delivered in-person or non-traditionally. [high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7];

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive, at a minimum, the instruction required pursuant to KRS ~~158.033~~[157.270];

(e) The pupil has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive at a minimum, the instruction required pursuant to paragraph (d) of this subsection;

(f) The pupil has an individual education program (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7 and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305. A pupil may be counted as participating[in attendance] for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7; or

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7.

~~(5) [Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.~~

~~(6)] The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.[~~

~~(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.~~

~~Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes.~~

~~(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly scheduled school day for the pupil's grade level.~~

~~(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly scheduled school day for the pupil's grade level.~~

~~(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly scheduled school day for the pupil's grade level.~~

~~(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly scheduled school day for the pupil's grade level.]~~

Section 3. Shortened School Day. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. ~~[The time a pupil is in attendance shall be included in calculating the district's average daily attendance.]~~

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. ~~[The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.]~~

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. (1) If a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, ~~[the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under]~~ the conditions established in subsection (3) of this section shall be met.

(2) If a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, ~~[the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under]~~ the conditions established in subsection (3) of this section shall be met.

(3)(a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of pupil work samples, including evidence of pupil self-reflection; and
3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;

4. Principals; or
5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If a pupil is recommended by the local board of education for accelerated placement into the entry or second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. ~~[The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.]~~

Section 7. Due Dates for Certain Reports. (1)(a) Districts shall report district level participation rates for the 2020-21 school year for in-person and non-traditional instruction to the department.

(b) Districts shall report the participation rate from the first day of instruction through September 30, 2020 on or before October 15, 2020.

(c) Districts shall report the participation rate from October 1, 2020 through December 31, 2020 on or before January 15, 2021. The report shall also include the cumulative district participation rate for the year to date.

(d) Districts shall report the participation rate, including the cumulative participation rate, for the entire school year no later than July 1, 2021.

(2) The department shall post the district participation rates to the department's website and provide a copy to the Legislative Research Commission within fifteen (15) days of the district report submission deadlines. ~~[The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.~~

~~(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.]~~

Section 8. Nonresident Pupils. (1)(a) A written agreement executed by local boards of education for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the resident district no later than October 1 of the school year prior to the school year to which it will apply.

(b) The written agreement shall include the specific terms to which the districts have agreed.

(c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year covered by the agreement.

(d) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district no later than June 30 of each year.

(2) A list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(b) and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year.

(3)(a) If an agreement cannot be reached for the enrollment of nonresident pupils as provided in KRS 157.350(4)(a), a local board of education may file an appeal to the commissioner no later than October 15 of the school year prior to the school year to which an agreement would apply.

(b) A local board of education shall file its appeal to the commissioner in person or by mail at the following address: Commissioner of Education; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of education filing an appeal to the commissioner shall include written arguments and documents in support of its position.

(c) Upon receipt of an appeal pursuant to KRS 157.350(4)(a), the commissioner shall notify the local boards of education involved in the dispute and provide a deadline not to exceed twenty (20) calendar days for the responding local board of education to file written arguments and documents supporting its position. The commissioner shall issue a written decision settling the dispute within thirty (30) calendar days following the deadline for the responding local board of education to file written arguments and documents supporting its position.

(4)(a) A local board of education may appeal the commissioner's written decision to the state board of education by filing a notice of appeal and request for hearing no later than fifteen (15) calendar days following issuance of the commissioner's written decision.

(b) A notice of appeal and request for hearing from a local board of education shall include:

1. the name of the school district filing the notice of appeal and request for hearing;
2. the case number, if any, assigned to the commissioner's written decision;
3. the date of the commissioner's written decision;
4. a statement of the issues which form a basis for the notice of appeal and request for hearing; and
5. the signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.

(c) A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.

(5)(a) Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.

(b) Following issuance of a notice of hearing and assignment of a hearing officer as set forth in subsection (5)(a) of this Section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this Section.

(c) Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education pursuant to KRS 13B.110.

(d) Parties may file exceptions to the hearing officer's recommended order pursuant to KRS 13B.110.

(e) Following receipt of the hearing officer's recommended order and any exceptions filed by the parties, or following conclusion of the administrative hearing if conducted before a quorum of the state board of education, the state board of education shall issue a final order pursuant to KRS 13B.120.

Section 9. ~~[Weather-related Low Attendance Days. (1) The SAAR may:~~

~~(a) Substitute the prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and~~

~~(b) Shall constitute certification that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).~~

~~(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.~~

~~Section 10.] Nontraditional Instruction Program Health and Safety Closings. (1) For the 2020-21 school year, each school term shall include no less than the equivalent of the student instructional year in subsection (1)(f) of KRS 158.070, or a variable student instructional year in subsection (1)(h) of KRS 158.070, except that the commissioner of education may grant the equivalent of an unlimited number of student attendance days for school districts that have a nontraditional instruction plan approved by the commissioner of education on days when the school district is closed for health or safety reasons. (2) The district's plan shall indicate how the nontraditional instruction process shall be a continuation of learning that is occurring on regular student attendance days. Instructional delivery methods, including the use of technology, shall be clearly delineated in the plan.[(1) The SAAR may:~~

~~(a) Substitute the prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(10); and~~

~~(b) Shall constitute certification that the low attendance was due to health and safety reasons.~~

~~(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.~~

~~(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.]~~

Section 10.[44.] Original Source of Participation and Attendance Data. (1) The school's records of daily participation, ~~[attendance and teacher's monthly attendance reports, daily and class period absentee lists,]~~ pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of ~~[attendance]~~ data for all pupils enrolled in the public common schools for school year 2020-21~~[and shall be verified at the end of each school month].~~

~~(2) [The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.~~

~~(3)] The school's records of daily participation, and previous years' attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. For years prior to the 2020-21 school year,~~[The]~~ daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school years after the current school year.~~

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or non-public school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or non-public school in another state who has not previously enrolled in Kentucky during the current school year;

- (3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W07, W24 or W25 for previous school years;
- (4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;
- (5) R02 - A pupil received from another public school in the same public school district;
- (6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;
- (7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;
- (8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;
- (9) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;
- (10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;
- (11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, local homebound instructional services or hospital setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;
- (12) W08 - A pupil withdrawn due to death;
- (13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
- (14) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;
- (15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;
- (16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;
- (17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;
- (18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;
- (19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district but thereafter enrolled in the district;
- (20) W25 - A pupil who is at least eighteen (18) years of age and has withdrawn from public school;
- (21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;
- (22) W27 - A pupil who has withdrawn from school and subsequently received a GED;

- (23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;
- (24) W29 - A pupil who has moved out of state or out of the United States;
- (25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;
- (26) C01 - A pupil who completes the school year in the school of the most current enrollment;
- (27) G01 - A pupil who graduates in less than four (4) years;
- (28) G02 - A pupil who graduates in four (4) years;
- (29) G03 - A pupil who graduates in five (5) or more years;
- (30) G04 - A pupil who graduates in six (6) or more years; and
- (31) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence and for the 2020-21 school year, days ineligible to be counted towards participation.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

- (1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;
- (2) Black or African American - A person having origins in any of the black racial groups of Africa;
- (3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;
- (4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and
- (5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. (1) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference. (1) "Home/Hospital Program Form", October 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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: July 10, 2020

FILED WITH LRC: July 14, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 24, 2020, at 10 a.m. 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 proposed administrative regulation. Written comments shall be accepted through September 30, 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 amendment is required due to the ongoing COVID-19 Pandemic. The amendment will enable school districts to provide various types of student instruction for the 2020-21 school year without the loss of significant funding. In order to respond to the public health pandemic, school districts must deliver student instruction in new and innovative ways. These new and innovative ways include traditional in-person, non-traditional (NTI) remote and hybrid instructional models. The NTI model does not allow for the collection of student attendance data under the current attendance recording system. This administrative regulation establishes a method for recording and reporting student participation rather than attendance for in-person, NTI and hybrid instructional models. It also authorizes the Commissioner of Education to grant an unlimited number of NTI days to districts.

(b) The necessity of this administrative regulation: As stated above, this emergency regulation is necessary to respond to the ongoing COVID-19 public health pandemic. Because of the need to social distance and adhere to Centers for Disease Control (CDC) and Kentucky Department of Public Health (DPH) guidelines, school districts must provide student instruction in new and innovative ways. These innovative ways, particularly NTI, make the current attendance model impracticable for the 2020-21 school year. Thus, it is temporarily necessary to provide for an alternate means of recording student participation and engagement. This emergency amendment sets forth the mechanisms for recording and reporting of student participa-

tion. It also permits the Commissioner of Education to grant an unlimited number of district NTI days during the 2020-21 school year to permit districts flexibility in their local response to the public health pandemic.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency amendment conforms to the authorizing statutes as follows: KRS 150.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate governor's Executive Order 2020-243 suspending KRS 158.070(9), 157.360(2), (9)-(11), (13)(a), and (16), and applicable corresponding provisions of 2020 Reg. Sess. Ky. Acts ch. 92, Part 1,C,1(2) and (4) that allot funding using average daily attendance; and KRS 157.370(3) for the 2020-21 school year for SEEK payments that will occur during the 2021-22 school year. This administrative regulation establishes a uniform method of recording pupil attendance and participation. This emergency amendment is necessary to address the imminent threat to public health, safety, and welfare; to protect human health; and to prevent loss of state funds while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform method of recording pupil attendance and participation. This emergency amendment is necessary to address the imminent threat to public health, safety, and welfare; to protect human health; and to prevent loss of state funds while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

(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 emergency amendment sets forth the mechanisms for recording and reporting student participation rather than attendance. It also permits the Commissioner of Education to grant an unlimited number of district NTI days during the 2020-21 school year to permit districts flexibility in their local response to the public health pandemic.

(b) The necessity of the amendment to this administrative regulation: This emergency regulation is necessary to respond to the ongoing COVID-19 pandemic. Because of the need to social distance and adhere to Centers for Disease Control (CDC) and Kentucky Department of Public Health (DPH) guidelines, school districts must provide student instruction in new and innovative ways. These innovative ways, particularly NTI, make the current attendance model impracticable. Thus, it is temporarily necessary to provide for an alternate means of recoding student participation and engagement rather than attendance. It is also necessary that districts be able to provide NTI instruction. The amendment authorizes the Commissioner of Education to grant an unlimited number of NTI days to districts.

(c) How the amendment conforms to the content of the authorizing statutes: This emergency amendment conforms to the authorizing statutes as follows: KRS 150.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support

Education Excellence in Kentucky (SEEK) Program. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate governor's Executive Order 2020-243 suspending KRS 158.070(9), 157.360(2), (9)-(11), (13)(a), and (16), and applicable corresponding provisions of 2020 Reg. Sess. Ky. Acts ch. 92, Part 1,C,1(2) and (4) that allot funding using average daily attendance; and KRS 157.370(3) for the 2020-21 school year for SEEK payments that will occur during the 2021-22 school year. This administrative regulation establishes a uniform method of recording pupil attendance and participation. This emergency amendment is necessary to address the imminent threat to public health, safety, and welfare; to protect human health; and to prevent loss of state funds while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

(d) How the amendment will assist in the effective administration of the statutes: This emergency regulation is necessary to respond to the ongoing COVID-19 pandemic. Because of the need to social distance and adhere to Centers for Disease Control (CDC) and Kentucky Department of Public Health (DPH) guidelines, school districts must provide student instruction in new and innovative ways. These innovative ways, particularly NTI, make the current attendance model impracticable. Thus, it is temporarily necessary to provide for an alternate means of recording student participation and engagement rather than attendance. It is also necessary that districts be able to provide NTI instruction. The amendment authorizes the Commissioner of Education to grant an unlimited number of NTI days to districts.

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

(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: School districts will have to record student participation in Infinite Campus (IC), the statewide student information system. This is the same software platform where districts currently record student attendance. The Kentucky Department of Education (KDE) is currently working with IC to develop the recording and reporting tools. School districts must report student participation rates to KDE and the Legislative Research Commission three times during the 2020-21 school year. Districts may also apply to the Commissioner of Education for unlimited NTI days to provide remote instruction to students as-needed.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency amendment is required due to the ongoing COVID-19 Pandemic. The amendment will enable school districts to provide various types of student instruction for the 2020-21 school year without the loss of significant funding. In order to respond to the pandemic, school districts must deliver student instruction in new and innovative ways. These new and innovative ways include traditional in-person, non-traditional (NTI) remote and hybrid instructional models. The NTI model does not allow for the collection of student attendance data under the current attendance recording system. This administrative regulation establishes a method for recording and reporting student participation rather than attendance for in-person,

NTI and hybrid instructional models. It also authorizes the Commissioner of Education to grant an unlimited number of NTI days to districts.

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

(a) Initially: There are no expected additional costs to school districts in implementing the emergency amendment.

(b) On a continuing basis: There are no expected on-going additional costs related to this emergency amendment. This is a temporary emergency amendment necessary only to respond the current pandemic.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDE General Funds

(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 of 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? School districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This emergency amendment conforms to the authorizing statutes as follows: KRS 150.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate governor's Executive Order 2020-243 suspending KRS 158.070(9), 157.360(2), (9)-(11), (13)(a), and (16), and applicable corresponding provisions of 2020 Reg. Sess. Ky. Acts ch. 92, Part 1,C,1(2) and (4) that allot funding using average daily attendance; and KRS 157.370(3) for the 2020-21 school year for SEEK payments that will occur during the 2021-22 school year. This administrative regulation establishes a uniform method of recording pupil attendance and participation. This emergency amendment is necessary to address the imminent threat to public health, safety, and welfare; to protect human health; and to prevent loss of state funds while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health 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? The administrative regulation will not generate revenue for the school district. The regulation requires districts to record student participation rather than student attendance. This enables dis-

tricts to provide in-person, NTI and hybrid models of student instruction. Additionally, it authorizes the Commissioner of Education to grant an unlimited number of NTI days. The regulation provides districts with the flexibility required to provide student instruction for the 2020-21 school year given the on-going pandemic.

(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? The regulation is not expected to result in any new costs.

(d) How much will it cost to administer this program for subsequent years? The regulation is temporary and not expected to result in any new costs.

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: