

**STATEMENT OF EMERGENCY
702 KAR 7:140E**

Pursuant to KRS 13A.190(l)(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 permit an additional maximum of 30 minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19. Districts are preparing for operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. 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 districts to plan for and deliver instruction for the 2020-21 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 7:140E. School calendar.

EFFECTIVE: August 12, 2020

RELATES TO: KRS 157.320, 157.350, 158.060, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regu-

lations governing the use of school days and the establishment of school calendars. This administrative regulation establishes the requirements for school districts to follow regarding school calendars.

Section 1. Calendar Requirements. (1) The local board of education shall adopt a school calendar on or before May 15 of each year. The calendar shall:

(a) Establish the length of each student attendance day, in accordance with KRS 158.060(3); and

(b) Set the instructional time the local board of education requires for kindergarten per KRS 157.320(7).

(2) Opening day shall be scheduled to occur prior to the first student attendance day of the student instructional year. (3) Closing day shall be scheduled to occur following the completion of the last student attendance day of the student instructional year.

(4) Local school districts shall plan, in accordance with this subsection, for the make-up of instructional time missed due to emergency. In addition to the minimum 1,062 hour student instructional year, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies may be held before the end of the student instructional year. Diplomas shall be distributed after completion of the student instructional year.

Section 2. Calendar Approval. (1) The local board of education shall file each adopted school calendar, which complies with the requirements of Section 1 of this administrative regulation, with the department no later than June 30 of each year. The local school district shall not be paid any installment of its Support Education Excellence in Kentucky (SEEK) program allotment until the school calendar has been approved by the department.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar, which complies with the requirements of Section 1 of this administrative regulation, shall be submitted for approval to the department no later than June 30 of each year.

Section 3. Instructional Time Missed. (1) The regularly scheduled student attendance day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the department except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall not be required to make up a total of five (5) hours missed each student instructional year that were missed as a result of student attendance days shortened due to emergency. These hours shall be reported to the department on the amended school calendar and shall be included in the calculation of total hours of instructional time for the student instructional year.

(3) Except as provided in subsection (2) of this section, all instructional time missed on student attendance days shortened due to emergency shall be made up and shall be reported to the department on the amended school calendar.

Section 4. Emergency Day Waiver. (1) A school district shall not be granted an emergency day waiver unless the district has missed more than twenty (20) regular student attendance days district-wide and the district has demonstrated that an extreme hardship would result if the district is not granted an emergency day waiver. The local school district shall make up at least the first twenty (20) regular student attendance days missed in a school year by adding these equivalent hours back into the school calendar.

(2) A local board of education request for a district-wide emergency day waiver shall be submitted to the commissioner for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

(3) A local board of education may request an emergency day waiver if one (1) school, or part of the district, is forced to miss school on a particular student attendance day due to an emergency. The request shall be submitted to the commissioner for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

Section 5. Activities of the Student Attendance Day. (1) The following shall constitute the activities to be conducted during the student attendance day:

(a) Courses and content included in the Kentucky Core Academic Standards, pursuant to 704 KAR 3:303;

(b) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(c) ~~[A maximum of]~~ five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction. For school year 2020-2021, a maximum of thirty (30) minutes may be used for Novel Coronavirus (COVID-19) related activities including, but not limited to, cleaning, sanitizing, hand washing, taking of temperatures, and instructing students on the use of masks and social distancing. This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the student attendance day, as described in subsection (1)(b) of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided. An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office. 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:

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 this 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 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 amendment permits a maximum of thirty (30) minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to the Novel Coronavirus (COVID-19).

(b) The necessity of this administrative regulation: 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. Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19. Additional flexibility measures are needed for local school district operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. This emergency regulation provides this additional flexibility without extending the overall school day which would result in additional logistical concerns for administrators, teachers and parents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regulations governing the use of school days and the establishment of school calendars. This emergency amendment is necessary to permit a maximum of thirty (30) minutes of time to be counted towards instructional hours for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency amendment will assist in the effective administration of the statutes by allowing a maximum of thirty (30) minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to COVID-19 to be used during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

(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 emergency amendment permits a maximum of thirty minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period, or after the last instructional period.

(b) The necessity of the amendment to this administrative regulation: 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. Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19. Additional flexibility measures are needed for local school district operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. This emergency regulation provides this additional flexibility without extending the overall school day which would result in additional logistical concerns for administrators, teachers and parents.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regulations governing the use of school days and the establishment of school calendars. This emergency amendment is necessary to permit a maximum of thirty (30) minutes of time to be counted towards instructional hours for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

(d) How the amendment will assist in the effective administration of the statutes: This emergency amendment will assist in the effective administration of the statutes by allowing a maximum of thirty (30) minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to COVID-19 to be used during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

(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: No actions are necessary to

comply with this emergency amendment. The local school districts may use the thirty (30) minutes at times most beneficial for each district.

(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 new costs related to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19. Districts are preparing for operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period, or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

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

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

(b) On a continuing basis: There are no expected on-going costs related to the emergency amendment. This is a temporary emergency amendment necessary only to respond to the current pandemic for the 2020-21 school year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As previously stated, no costs are anticipated. In the event of incidental costs, 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 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? Explain why tiering was or was not used. 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 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regulations governing the use of school days and the establishment of school calendars. This emergency amendment is necessary to permit a maximum of thirty (30) minutes of time to be counted towards instructional hours for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the

five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

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 amendment 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 amendment is not expected to generate any revenue.

(c) How much will it cost to administer this program for the first year? This amendment is not expected to result in any new costs.

(d) How much will it cost to administer this program for subsequent years? This administrative 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: