

**EDUCATION AND LABOR CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(Amendment)**

**704 KAR 3:095. The Use of a Multitiered System of Supports~~[Response-to-Intervention in Kindergarten through Grade 3]~~.**

RELATES TO: KRS 158.305, 156.070, 156.160, 156.488, 158.070(7), 158.645, 158.791, 158.6451, 158.6453(17)(b), 158.6459

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.305(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 158.305(2) requires the Kentucky Board of Education to promulgate administrative regulations to further define a multitiered system of supports~~[for the district-wide use of a response-to-intervention system]~~ for individual students in K-3~~[Kindergarten through Grade 3]~~ that includes a tiered continuum of interventions, using evidence-based research, with varying levels of intensity and duration. KRS 158.6459 requires the Kentucky Department of Education to support schools and school districts in developing accelerated learning opportunities to address academic deficiencies of high school students prior to high school graduation. KRS 156.488 requires the Kentucky Department of Education to develop enhanced courses for students in grade 6, grade 9, grade 10, grade 11, and grade 12 that are academically behind. KRS 158.791 requires the Kentucky Department of Education to support school districts in developing teaching strategies to address academic deficiencies of students. This administrative regulation establishes the requirements for a district-wide multitiered system of supports~~[response-to-intervention system]~~ for students in K-12~~[Kindergarten through Grade 3]~~.

Section 1. Definitions.

(1) "Diagnostic assessment" means a formal or informal student assessment, utilizing valid and reliable tools, given to guide instruction and tailor interventions based upon individual student academic and behavioral strengths and needs in order to accelerate progress toward proficiency; ~~["Core instruction" means instruction based on the state's academic standards as set forth in 704 KAR 3:303 and] [provided to all students.]~~

(2) "Differentiation" means the tailoring of curriculum, teaching environments, and practices to create appropriately different learning experiences to meet individual student needs while recognizing each student's learning differences, varying interests, readiness levels, and level of responsiveness to Tier 1 universal instruction;

~~[(2)] ["Differentiated core academic and behavioral instruction" means the tailoring of curriculum, teaching environments, and practices to create appropriately different learning experiences for students to meet each student's needs while recognizing each student's learning differences, varying interests, readiness levels, and level of responsiveness to the standard core instruction.]~~

(3) "Evidence-based" has the same meaning as in 20 U.S.C. sec. 7801(21);~~[means classroom practices for which there is strong evidence of success.]~~

(4) "Implemented with fidelity" means the accurate and consistent ~~[provision or]~~ delivery or application of instructional resources, interventions and assessments~~[instruction]~~ as ~~[it was]~~ they were designed to be used.

(5) "Intervention" means an academic or behavioral instruction, practice, strategy, or curriculum that is identified through data-based problem-solving and provided to meet a student's academic and behavioral needs, in addition to Tier 1 universal instruction ;

~~[(5)] ["Intensive academic and behavioral intervention" means that, in addition to core instruction and targeted intervention instruction, a student is provided additional intervention services that are tailored to the student's individualized academic or behavioral needs.]~~

(6) "Multitiered system of supports" or "MTSS" means a multi-level prevention system designed to maximize student achievement and social and behavioral competencies through an integration of differentiated universal instruction, assessment, and intervention.

~~[(6)] ["Intervention" means an educational or behavioral instruction, practice, strategy, or curriculum that is provided to meet a student's academic and behavioral needs, in addition to core instruction.]~~

(7) "Tier 1 universal instruction" means instruction provided to all students based on the state's academic standards as set forth in 704 KAR 3:303 and 704 KAR Chapter 8, and is aligned with KRS 158.6451;

~~[(7)] ["Response to intervention" means a multi-level prevention system to maximize student achievement and social and behavioral competencies through an integration of assessment and intervention].]~~

(8) "Tier 2 targeted intervention" means supplemental evidence-based intervention, in addition to and in alignment with Tier 1 universal instruction, for students identified by universal screening and diagnostic assessment data as at-risk for not meeting grade-level academic or behavioral benchmarks;

~~[(8)] ["Targeted intervention" means] [the use of screening data to design appropriate interventions provided, in addition to core instruction, if a student's universal screening and other data results indicate that the student has not mastered a benchmark skill or grade level expectation in mathematics, reading, writing, or behavior.]~~

(9) "Tier 3 intensive intervention" means that, in addition to Tier 1 universal instruction and Tier 2 targeted intervention, a student is provided evidence-based intervention services, based on diagnostic assessment and progress monitoring data, with an intensity and duration matched to the student's individualized academic and behavioral needs; and

(10) ~~[(9)]~~ "Universal screening" means a systematic process of analyzing students' performance at certain points during the academic year, utilizing valid and reliable tools to assess~~[screening that uses specific criteria to evaluate]~~ the learning and achievement of all students in academics and related behaviors, that may include validated indicators such as course performance, attendance, and behavior data to evaluate the effectiveness of Tier 1 universal instruction and determine which students need closer monitoring or intervention~~[learning differences, class attendance, tardiness, and truancy, to determine which students need closer monitoring or an intervention].~~

Section 2. Each local school district shall implement a comprehensive MTSS for K-12~~[response to intervention system for Kindergarten through Grade 3]~~ that includes:

(1) A tiered delivery system with a continuum of ~~[(Multi-tiered systems of support, including]~~ differentiated Tier 1 universal~~[core academic and behavioral]~~ instruction~~[and targeted],~~ Tier 2 targeted intervention, and Tier 3 intensive ~~[academic and behavioral]~~ intervention, delivered by individuals most qualified to provide the intervention services, in order to~~[that]~~ maximize each student's academic and behavioral outcomes~~[student achievement and reduce behavioral problems];~~

(2) Universal screening and diagnostic assessments to determine individual student needs and baseline performance;

(3) Interventions that:

- (a) Are evidence-based;
  - (b) Vary in intensity and duration based on student need;
  - (c) Meet the needs of the individual student;
  - (d) Are implemented with fidelity;
  - (e) Are delivered by individuals most qualified to provide the intervention services; and
  - (f) Are monitored through a comparison of baseline data collected prior to intervention and ongoing progress data;
- (4) Support for early intervention to address academic and behavioral issues; and
- (5) Data-based documentation of:
- (a) Assessments or measures of behavior;
  - (b) Progress during instruction;
  - (c) Evaluation, at regular intervals, for continuous progress; and
  - (d) Individual student progress reports shared with the parents of each student in K-12 ~~[Kindergarten through Grade 3]~~ that summarize the student's academic skills, ~~in mathematics, reading, and writing,~~ the student's behavior, ~~;~~ and any intervention plans and services being delivered.

~~[Section 3.] [The response to intervention system for Kindergarten through Grade 3 shall coordinate with district wide interventions required by KRS 158.792, 158.6453(11)(b), 158.6459(1), (2), (3), 704 KAR 3:305, Section 1(1)(b), (3)(d), 704 KAR 3:530, Section 2(1)(b), 704 KAR 3:285, Section 3(4), 707 KAR 1:300, Section 1, 707 KAR 1:310, Section 1(3)(a), and 707 KAR 1:320.]~~

Section 3. ~~[Section 4.]~~ Each local district shall submit to the Kentucky Department of Education by October 1 of each year evidence demonstrating districtwide implementation of a comprehensive MTSS. ~~[the data required by KRS 158.305(10) to the department through the Kindergarten to Grade 3 program review required in 703 KAR 5:230.]~~

- (1) Evidence provided by the district shall address implementation requirements as provided in Section 2 of this administrative regulation for grades K-12.
- (2) The district shall also submit evidence of implementation for K-3 required by KRS 158.305(2).

*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).*

*ROBIN FIELDS KINNEY, Interim Commissioner of Education*  
*SHARON PORTER ROBINSON, Ed.D., Chairperson*

APPROVED BY AGENCY: December 7, 2023

FILED WITH LRC: December 8, 2023 at 9:25 a.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held February 28, 2024 at 10:00 am, 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 5 workdays 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 cancelled. 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 February 29, 2024. Send written notification of intent

to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd G. Allen, 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](mailto: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:**

704 KAR 3:095 establishes the requirements for a district-wide multitiered system (MTSS) of supports for students in K-12.

**(b) The necessity of this administrative regulation:**

KRS 156.160 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. Per KRS 158.305(2), "notwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations to further define a multitiered system of supports for district-wide use of a system for students in kindergarten through grade three (3), that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to evidence-based research and matched to individual student strengths and needs." This regulation also provides amendments that align evidence-based MTSS services for students in K-12. KRS 158.6459 requires the Kentucky Department of Education to support schools and school districts in developing accelerated learning opportunities to address academic deficiencies of high school students prior to high school graduation. KRS 156.488 requires the Kentucky Department of Education to develop enhanced courses for students in grade 6, grade 9, grade 10, grade 11, and grade 12 that are academically behind. KRS 158.791 requires the Kentucky Department of Education to support school districts in developing teaching strategies to address academic deficiencies of students.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:**

KRS 158.305(2) requires the KBE to promulgate administrative regulations to further define MTSS for individual students in K-3 that includes a tiered continuum of interventions, using evidence-based research, with varying levels of intensity and duration. KRS 156.160(1) requires the KBE to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools. The regulation outlines the requirements for the development of a district-wide MTSS to be implemented by schools for students in K-12.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:**

This regulation outlines the requirements for the development of a district-wide MTSS to be implemented by schools for students in K-12.

**(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:**

No answer provided.

**(b) The necessity of the amendment to this administrative regulation:**

The amendments to 704 KAR 3:095 are necessary due to the passage of Senate Bill 9 (2022) which amended KRS 158.305. KRS 158.305(2) provides that "[n]otwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations to further define a multitiered system of supports for district-wide use of a system for students in kindergarten through grade three (3), that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to evidence-based research and matched to individual student strengths and needs." The amendments outline the requirements for a district-wide MTSS and expectations for reporting evidence of implementation to the KDE. (c) How the amendment conforms to the content of the authorizing statute: The amended regulation conforms to KRS 158.305(2) by providing definitions for Tier 1, Tier 2 and Tier 3 interventions and outlines the requirements of the district in implementing a tiered continuum of interventions using evidence-based research with varying levels of intensity and duration. KRS 156.160(1) requires the KBE to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools. The amendments outline the requirements for the development of a district-wide MTSS to be implemented by schools for students in K-12.

**(c) How the amendment conforms to the content of the authorizing statutes:**

No answer provided.

**(d) How the amendment will assist in the effective administration of the statutes:**

The amendments to 704 KAR 3:095 provide definitions for a tiered continuum of intervention with varying levels of intensity and duration. The amendments provide districts with expectations for implementation based on universal screening and diagnostic assessments, to determine evidence-based interventions that best maximize the student's academic and behavioral outcomes as to meet the expectations provided under KRS 158.645 and 158.6451 in addition to progress reporting for families reporting requirements demonstrating evidence of implementation.

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

Local schools, districts and the KDE.

**(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 entities identified above will need to take the following actions to comply with the amendments proposed in the regulation: Amendments to 704 KAR 3:095 require each local school district to implement a MTSS for grades K-12 by establishing a tiered instructional delivery system with a continuum of differentiated Tier 1 universal, Tier 2 targeted, and Tier 3 intensive intervention that address the academic and behavioral needs of individual students. Amendments require districts to include in their MTSS universal screening and diagnostic assessments, evidence-

based interventions strategies, and expectations for utilizing student data to regularly monitor progress, in addition to methods for early intervention and documentation thereof, and progress reports for parents summarizing the services being offered. The KDE will provide support via staffing, training and supplemental resources to ensure the requirements provided under 704 KAR 3:095 are met with fidelity.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):**

The cost to schools and districts is unknown as many schools have MTSS services in place or variations thereof. The KDE cost to provide guidance to schools and districts is minimal as staffing, resources, and materials are currently in place.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):**

Students are the primary beneficiaries of the amendments. Amendments to 704 KAR 3:095 ensure that students receive a tiered continuum of instruction, based on universal screening and diagnostic assessments, in order to receive evidence-based interventions that best maximize students' academic and behavioral outcomes.

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

**(a) Initially:**

While the initial implementation cost is unknown, the KDE will dedicate staff time to develop guidance to support schools and districts as they implement the amended requirements under 704 KAR 3:095. Depending on the individual needs of the district, and the current MTSS services in place, local staffing patterns, professional learning and resource allocation may need to be adjusted by schools and districts in order to ensure the requirements of the regulation are met.

**(b) On a continuing basis:**

The KDE has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and districts in their continued MTSS efforts. Schools will need continued access to the appropriate staff, training, release time, and resources depending upon the current MTSS efforts in place.

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

Federal, state and district 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:**

There will be no increase in fees. An increase in funding is dependent upon the MTSS services in place at each district and any additional implementation needs of each individual district.

**(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:**

This regulation does not establish any fees or directly or indirectly increase fees.

**(9) TIERING: Is tiering applied?**

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

## FISCAL NOTE

**(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?**

Kentucky schools, districts and the Kentucky Department of Education (KDE).

**(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 158.305(2) requires the Kentucky Board of Education (KBE) to promulgate administrative regulations to further define a multitiered system of supports (MTSS) for individual students in K-3 that includes a tiered continuum of interventions, using evidence-based research, with varying levels of intensity and duration. KRS 156.160 requires the KBE to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools.

**(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.**

The effect on expenditures for local education agencies is unknown and dependent upon the current implementation efforts and resources in place at each local school and district.

**(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?**

No 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?**

No revenue.

**(c) How much will it cost to administer this program for the first year?**

The cost to local schools and districts is unknown and dependent upon the current resources and implementation efforts in place. The budget and staffing patterns at the local district may need to be adjusted based on their current implementation efforts. KDE staff time will be impacted by the need for implementation guidance and answering questions from the field. This impact should decrease each year of implementation.

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

In subsequent years, the KDE will remain available to schools and districts to provide ongoing support with little to no additional costs. Staffing patterns and staff time at the local school and district may need to be adjusted depending upon the needs of the students and the implementation efforts already in place.

**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 (+/-):**Kentucky schools and districts are at various phases of implementing MTSS services for students. Therefore, expenditures are unknown as it is dependent upon the implementation progress in place at the individual district and school.

**Other Explanation:**

N/A

**(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.**

**(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?**

The administrative regulation will not generate cost savings.

**(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?**

The administrative regulation will not generate cost savings.

**(c) How much will it cost the regulated entities for the first year?**

Kentucky schools and districts are at various phases of implementation of MTSS services for their students. Therefore, expenditures are unknown as it is dependent upon the implementation efforts and progress in place at the individual district and school.

**(d) How much will it cost the regulated entities for subsequent years?**

The KDE has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and districts. Staffing patterns and staff time at the local school and district may need to be adjusted depending upon the needs of the students and the implementation efforts already in place.

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

**Cost Savings (+/-):**N/A

**Expenditures (+/-):**N/A

**Other Explanation:**

Kentucky schools and districts are at various phases of implementation. Therefore, expenditures are unknown and are dependent upon the implementation efforts and progress in place at the individual district and school. The KDE has mechanisms in place to support ongoing costs related to staff time and resources needed to support schools and districts.

**(5) Explain whether this administrative regulation will have a major economic impact, as defined below.**

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation is not anticipated to have a major economic impact on state or local government or regulated entities.