

**STATEMENT OF CONSIDERATION**  
**Relating to 704 KAR 3:095**  
**Response to Intervention**

**Kentucky Department of Education**

**Amended After Comments**

- (1) The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Malicia T. Hitch, Staff Attorney	Protection and Advocacy

- (2) The following people from the promulgating administrative body responded to the written comments:

Name and Title

Kevin C. Brown, Associate Commissioner and General Counsel  
David Wickersham, Assistant General Counsel  
Robin Chandler, Policy Advisor, Office of Next Generation Learners  
Johnny Collett, Division Director, Division of Learning Services

Summary of Comments and Responses

1. Subject Matter: Multi-tiered systems of support
  - (a) Comment: Protection and Advocacy stated that the proposed regulation allows for an unspecified number of tiers and does not specify when a student has exhausted the response to interventions process. Protection and Advocacy suggested that this could lead to variation in the number of tiers and a delay in special education referrals. Protection and Advocacy suggested deleting multi-tiered and inserting three-tiered.
  - (b) Response: No change has been made in response to this valuable comment. KDE has issued guidance to districts that addresses these concerns, and includes information from a 2011 OSEP Memorandum (OSEP 11-07) that clearly states local education agencies may not use "Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability." The initial evaluation provisions of the IDEA apply, regardless of whether the district plans to or is currently utilizing RTI strategies with the student. The guidance also notes, consistent with the OSEP memorandum, that a parent may request an evaluation at any time, pursuant to 34 CFR 300.301(b).

(2) Subject Matter: Use of the term “regular intervals”

(a) Comment: Protection and Advocacy commented that Section 2(5) (c) of the proposed regulation does not clearly define “regular intervals” and confusion may result. Protection and Advocacy suggested that districts may set inconsistent timelines in evaluating progress, changing intervention tiers and referring for special education services. Protection and Advocacy suggested that the regulation be amended to specify nine-week intervals and to explicitly address program fidelity.

(b) Response: No change was made in response to this comment. The agency is concerned that the requested language regarding nine week intervals may lead districts to misinterpret the regulation and to incorrectly conclude that they should monitor progress only once every nine weeks. The agency finds that it is appropriate to leave the frequency of progress monitoring to districts because they employ a variety of intervention programs and strategies and are best situated to determine the frequency with which interventions should be monitored for progress and fidelity.

(3) Subject Matter: Sharing documentation of response to intervention

(a) Comment: Protection and Advocacy commented that the regulation should require districts to provide documentation to parents regarding the State’s policies on student performance data, strategies for increasing the child’s rate of learning, and the parents’ right to an evaluation. Protection and Advocacy suggested that individual student reports related to response to intervention progress should be sent to parents with report cards, and that parents should be invited to attend evaluation meetings.

(b) Response: No change has been made in response to this productive comment. Tiered intervention strategies are very specific and are sometimes very technical in nature. Intervention teams meet 1-2 times per month, and guidance presently provided by the agency suggests that parents be invited to evaluation meetings, or at least contacted by a member of the response to intervention team to discuss placement and progress. The agency does not require every parent to be invited to the team meetings. Guidance will be added to encourage districts to share policies on student performance data, strategies for increasing the child’s rate of learning and advising parents of their right to request an evaluation.

(4) Subject Matter: Specific statutory and regulatory citations

(a) Comment: Protection and Advocacy commented that Section 3 of the proposed regulation references several statutes and regulations related to intervention, but exact sections and subsections are not identified for easy reference. Protection and Advocacy suggested that those citations be made more specific.

- (b) Response: Changes have been made in response to this comment. The agency proposes to amend the regulation to include more specific references to statutory and regulatory authority.

Summary of Statement of Consideration and  
Action Taken by Promulgating Body

The Kentucky Department of Education has responded to comments from the public regarding proposed amendments to 704 KAR 3:095. The comments regarded the tiering of support and avoiding delays in special education referrals, the regularity of progress monitoring, documentation, and citations to statutory and regulatory authority.

The agency concurs with comments that emphasize the importance of avoiding delays, and notes that initial evaluations of IDEA apply, regardless of whether a district plans to or is currently utilizing RTI strategies with a particular student.

The agency agrees with comments that progress should be monitored regularly, but finds that the requested change in regulatory language would mislead districts about the minimum frequency with which such monitoring should occur.

Public comments noted the importance of sharing student progress and documentation with parents. The agency notes that the specific and technical nature of tiered intervention strategies complicates the sharing of such data in a clearly understandable fashion, but acknowledges that parental participation is a vital element of success.

In response to comments regarding citations to statutory and regulatory authority, the agency has amended the regulation for clarity.

The agency proposes the following amendments after comments:

Page 5

Line 2

Delete "KRS 148.792".

Page 5

Line 2

Insert "KRS 158.742".

Page 5

Line 3

After "KRS.6453", insert "(11) (b)".

Page 5

Line 3

After "KRS 158.6459, insert "(1), (2), (3)".

Page 5

Line 3

After "704 KAR 3:305", insert "Section 1 (1) (b) (d)".

Page 5

Line 3-4

After "704 KAR 3:530", insert "Section 2 (1) (b)".

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Line 4

After "704 KAR 3:285", insert "Section 3 (4)".

Page 5

Line 4

After "707 KAR 1:300", insert "Section 1".

Page 5

Line 4-5

After "707 KAR 1:310", insert "Section 1 (3) (a)".

1    **Education and Workforce Development Cabinet**

2    **Kentucky Board of Education**

3    **Department of Education**

4    **(New Administrative Regulation)**

5    **(Amended After Comments)**

6    **704 KAR 3:095. The Use of Response-to-Intervention in Kindergarten through Grade**  
7    **Three (3).**

8    RELATES TO: KRS 157.200

9    STATUTORY AUTHORITY: KRS 156.160 (1)(g), 158.305

10    NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1)(g) gives the Kentucky  
11    Board of Education the authority to promulgate administrative regulations and KRS 158.305

12    requires the Kentucky Board of Education to promulgate administrative regulations for the  
13    district-wide use of a response to intervention system for students in kindergarten through grade  
14    three (3). This administrative regulation establishes the requirements for a district-wide response  
15    to intervention system for students in kindergarten through grade three (3).

16    Section 1. Definitions. (1) "Core instruction" means instruction, based on the state's academic  
17    standards as set forth in 704 KAR 3:303, that is provided to all students.

18    (2) "Differentiated instruction" means the tailoring of curriculum, teaching environments, and  
19    practices to create appropriately different learning experiences for students to meet each

- 1 student's needs while recognizing each student's learning differences, varying interests,
- 2 readiness levels, and level of responsiveness to the standard core curriculum.

- 1 (3) "Evidence-based" means classroom practices for which there is strong evidence of success.
- 2 (4) "Fidelity of implementation" means the accurate and consistent provision or delivery of  
3 instruction as it was designed.
- 4 (5) "Intensive intervention" means that, in addition to core instruction and targeted intervention  
5 instruction, a student is provided additional intervention services that are tailored to the student's  
6 individualized academic or behavioral needs.
- 7 (6) "Intervention" means an educational or behavioral instruction, practice, strategy, or  
8 curriculum that is provided to meet a student's academic and behavioral needs, in addition to  
9 core instruction.
- 10 (7) "Response-to-intervention" means a multi-level prevention system to maximize student  
11 achievement and social and behavioral competencies through an integration of assessment and  
12 intervention.
- 13 (8) "Targeted intervention" means the use of screening data to design instructional interventions  
14 provided, in addition to core instruction, when a student's universal screening and other data  
15 results indicate that the student has not mastered a benchmark skill or grade level expectation in  
16 mathematics, reading, writing, or behavior.
- 17 (9) "Universal screening" means screening that uses specific criteria to evaluate the learning and  
18 achievement of all students in academics and related behaviors, that may include learning  
19 differences, class attendance, tardiness, and truancy, to determine which students need closer  
20 monitoring or an intervention.
- 21 Section 2. Local districts shall implement a comprehensive response-to-intervention system for  
22 kindergarten through grade three (3) that includes:

- 1 (a) Multi-tiered systems of support, including differentiated core academic and behavioral
- 2 instruction and targeted, intensive academic and behavioral intervention, delivered by individuals
- 3 most qualified to provide the intervention services, that maximize student achievement and
- 4 reduces behavioral problems;
- 5 (b) Universal screening and diagnostic assessments to determine individual student needs and
- 6 baseline performance;
- 7 (c) Interventions that:
- 8 1. Are evidence-based;
- 9 2. Vary in intensity and duration based on student need;
- 10 3. Meet the needs of the individual student;
- 11 4. Are implemented with fidelity;
- 12 5. Are delivered by individuals most qualified to provide the intervention services; and
- 13 6. Are monitored through a comparison of baseline data, collected prior to intervention, and
- 14 ongoing progress data.
- 15 (d) Support for early intervention to address academic and behavioral issues; and
- 16 (e) Data-based documentation of:
- 17 1. Assessments or measures of behavior;
- 18 2. Progress during instruction;
- 19 3. Evaluation, at regular intervals, for continuous progress; and
- 20 4. Individual student reports shared with the parents of each student in kindergarten through
- 21 grade three (3) that summarize the student's skills in mathematics, reading, writing, the students'
- 22 behavior, and any intervention plans and services being delivered.



1 Section 3. The response-to-intervention system for kindergarten through grade three (3) shall  
2 coordinate with district-wide interventions required by [~~KRS 148.792~~], KRS 158.742, KRS  
3 158.6453 (11) (b), KRS 158.6459 (1) (2) (3), 704 KAR 3:305 Section 1 (1) (b)(d), 704 KAR  
4 3:530 Section 2 (1) (b), 704 KAR 3:285 Section 3 (4) , and 707 KAR 1:300 Section 1, 707 KAR  
5 1:310 Section 1 (3) (a), and 707 KAR 1:320.  
6 Section 4. Local districts shall submit the data required by KRS 158.305 (10) to the Department  
7 through the kindergarten to grade three (3) program review required in 703 KAR 5:230.

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(4).

\_\_\_\_\_  
(Date)

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Terry Holliday, Ph.D.  
Commissioner of Education

\_\_\_\_\_  
(Date)

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David Karem, Chair  
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2013, at 10:00 a.m. in the State Board Room, 1<sup>st</sup> Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five 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 until January 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 704 KAR 3:090

Agency Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a district-wide response-to-intervention system for students in kindergarten through grade three (3).

(b) The necessity of this administrative regulation: HB 69 (2012) requires the Kentucky Board of Education to promulgate administrative regulations for district-wide use of a response-to-intervention system for students in kindergarten through grade three (3). Response-to-intervention optimizes a systematic and ongoing assessment of academic and behavioral needs and uses the data in collaborative conversations with parents/guardians and educators to prepare students to be college and career ready.

(c) How this administrative regulation conforms to the content of the authorizing statute: HB 69 (2012) requires the Kentucky Board of Education to promulgate administrative regulations for district-wide reporting on the use of K-3 response-to-intervention implementation in reading by August 1, 2013, in mathematics by August 1, 2014, and behavior by August 1, 2015; and the regulation conforms to those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation defines the required district-wide system of interventions. The administrative regulation also defines the components required in that system, such as multi-tiered systems of support, universal screening, interventions that meet the needs of students, and documentation of those interventions.

(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: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have K-3 students.

(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: Districts will need to establish a system of tiered interventions for students in kindergarten through grade three who do not meet academic (reading, writing, and mathematics) and behavioral benchmarks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Interventions can be developed and provided for students by established school personnel. A vendor product is not required or necessary to fulfill the requirements of the regulation. Schools may establish their own assessment system, but as schools are already required to have an elementary assessment, this regulation does not add any additional requirements. Depending upon the number of students identified for tiered services, schools may need additional staff if they cannot repurpose staff and would thereby incur additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As schools attend to the individual needs of each student, more students will attain and maintain grade level performance and will be more likely to meet proficiency and college and career readiness goals. Also as intervention occurs early with the appropriate intensity and duration, the number of students who are referred for special education evaluation and services will be reduced.

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

(a) Initially: Schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(b) On a continuing basis: Once intervention resources and assessment resources are established, unless there is a consumable product such as a workbook or an ongoing maintenance fee for a product, there should not be a continuing cost. Also, as schools focus on differentiating core instruction to meet the needs of diverse learners, the need for tier 2 and 3 interventions will decrease.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Schools may utilize Title I and general funds for intervention. If the school has a Read to Achieve Grant or Mathematics Achievement Fund grant, those funds are to be targeted to interventions. Also, 707 KAR 1:300 allows school districts to conduct coordinated early intervening services for students from kindergarten through 12th grade (with particular emphasis on students in kindergarten through grade three (3) who need additional academic and behavioral intervention) to be successful in the regular education environment prior to referral for special education. A school district shall not spend more than fifteen (15)

percent of the money received under IDEA Part B to provide these coordinated early intervening services.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if any, or by the change if it is an amendment: No increase in fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

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

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 704 KAR 3:090

Contact Person: Kevin C. Brown

Phone number: 564-4474

(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. HB 69 (2012).

(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. Initially, schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(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? There will be no impact on revenues with this administrative regulation.

(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? There will be no impact on revenues with this administrative regulation.

(c) How much will it cost to administer this program for the first year? Initially, schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(d) How much will it cost to administer this program for subsequent years? Once intervention resources and assessment resources are established, unless there is a consumable product such as a workbook or an ongoing maintenance fee for a product, there should not be a continuing cost. Also, as schools focus on differentiating core instruction to meet the needs of diverse learners, the need for tier 2 and 3 interventions will decrease.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: