

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

704 KAR 19:002. Alternative education programs.

RELATES TO: KRS 156.070, 156.160, 160.380

STATUTORY AUTHORITY: KRS 156.160, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of alternative education programs in school districts.

Section 1. Definitions. (1) "Alternative education program" is defined by KRS 160.380.

(2) "Individual education program" or "IEP" is defined by 707 KAR 1:002.

(3) "Individual learning plan" or "ILP" means a comprehensive framework for advising students in grades six (6) through twelve (12) to engage in coursework and activities that will best prepare them to both realize college and career success and become contributing members of their communities.

(4) "Individual learning plan addendum" or "ILPA" means an action plan that addresses the changed educational needs of a student based upon entry into or exit from an alternative

education program that includes, as appropriate, academic and behavioral needs of the student, criteria for the student's re-entry into the traditional program, and provisions for regular review of the student's progress throughout the school year while in an alternative education program.

(5) "Involuntary placement" means the placement of a student in an alternative education program by local district school personnel to ensure the safety of the individual student, the student body, or staff; to meet the educational needs of the student; to transition the student to a placement as a state agency child pursuant to KRS 158.135 and 505 KAR 1:080; or for disciplinary purposes.

(6) "Off-site program" means an alternative education program located in a separate and dedicated program facility not located within the student's assigned school.

(7) "On-site program" means an alternative education program located within the student's assigned school.

(8) "Voluntary placement" means the placement of a student in an alternative education program at the request of the parent or emancipated student and with the agreement of school personnel to better meet the educational needs of the student.

Section 2. General Requirements. (1) Districts shall ensure that alternative education programs are aligned with college and career readiness outcomes for all students. Districts shall ~~[strive to]~~ **ensure that alternative education programs are not limited in scope or design, to include best practices in training of staff and administrators for delivering services and programming to guide all students to college and career readiness [to one (1) type of program offering to students]**. Students enrolled in alternative education programs may be eligible to participate in one (1) or more types of programs to address student learning needs that may include alternative digital learning environments, credit recovery, and innovative paths to

1 graduation.

2 (2) Local boards of education shall **adopt and annually review** ~~[review and adopt]~~ policies and
3 procedures ~~[as necessary]~~ for the operation of alternative education programs within the district.

4 Locally-adopted policies and procedures shall include:

5 (a) Purpose of the program, including the ways the program supports the district's college and
6 career readiness goals for students;

7 (b) Eligibility criteria, as appropriate;

8 (c) Process for entering students into the program;

9 (d) Process for transitioning students out of the program;

10 (e) Composition of the team to develop the ILPA, which shall include an invitation to the parents
11 to participate and, as appropriate, an invitation to the student to participate; and

12 (f) Procedures for collaboration with outside agencies involved with involuntary placements,
13 including courts or other social service agencies to address student transitions between programs.

14 (3) Alternative education programs may be either on-site programs at the student's assigned
15 school or off-site programs located in a separate facility.

16 (4) Alternative education program curriculum shall be aligned with the Kentucky Core Academic
17 Standards in 704 KAR 3:303, and the student learning goals in the ILP.

18 (5) Alternative education program students shall be subject to the minimum graduation
19 requirements in 704 KAR 3:305 and any additional local district graduation requirements.

20 (6) Alternative education programs shall be subject to any applicable requirements of 703 KAR
21 5:225 and Kentucky's Elementary and Secondary Education Act Flexibility Waiver, or its
22 successor.

23 (7) Students participating in alternative education programs shall be eligible to access

extracurricular activities as allowed by local district and school council policies and by 702 KAR 7:065 or other applicable organization rules.

(8) Students participating in alternative education programs shall continue to be able to access resources and services already available in the district, such as instructional materials, tutoring, intervention, and counseling services in furtherance of the student's educational program as determined through the development of the ILPA.

Section 3. Placement of Students. (1) The placement of students by the district in alternative education programs may be either voluntary or involuntary. Students entering alternative education programs shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation. The district shall ensure that an ILP, as required by 704 KAR 3:305, exists prior to placement of a student in an alternative education program.

(2) The placement decision for all students with an IEP shall be made through the admissions and release committee (ARC) process pursuant to 707 KAR 1:320. For a child with a disability, as defined by 707 KAR 1:002, Section 1(9), the IEP shall address the changed educational delivery needs of the student based upon entry into or exit from an alternative education program. The placement decisions for students that have been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

Section 4. Costs and Expenditures. Districts shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative education program operating in the district.

Section 5. Data. Districts shall utilize the student information system to enter data regarding

1 students enrolled in alternative education programs. Data collected shall include demographic,
2 programmatic or other data fields contained in the student information system or required by the
3 department to track and report student participation, educational programming, achievement, and
4 transition to and from alternative education programs.

5 Section 6. Personnel. Alternative education program teachers and administrators shall be subject
6 to the teacher certification requirements in KRS 161.020, and shall comply with the classified
7 and certified assignment restrictions outlined in KRS 160.380(3).

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).

TERRY HOLLIDAY, PH.D., Commissioner

DAVID KAREM, Chairperson

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 26, 2012, at 1 p.m. in the State Board Room, 1st 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 through November 30, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: 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

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum requirements for operating alternative education programs in local school districts.

(b) The necessity of this administrative regulation: KRS 156.160 grants the Kentucky Board of Education (KBE) the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. This administrative regulation establishes minimum requirements for alternative school programs. Kentucky's approved waiver from the No Child Left Behind Act of 2001 (NCLB) (issued pursuant to 20 U.S.C. 7861) included the Individual Learning Plan addendum (ILPA) process as a part of the state's recognition, accountability and support systems. Approval of the waiver was conditioned upon the implementation of these elements.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes minimum standards for alternative education programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific guidance to local school districts about general program requirements, student placement, staff certification, and data collection.

(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 schools and school districts in Kentucky.

(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: The proposed administrative regulation will require alternative programs to be aligned with college and career readiness outcomes, Kentucky's core academic standards, and graduation requirements. Districts that do not have policies and procedures to govern these programs will be required to develop them, and parents will be invited to participate in developing an ILP Addendum to address program changes that will occur as a result of a change in placement. Data on types of programs, program costs, and student participation will be collected.

(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 that do not have policies and procedures governing alternative education will be required to develop them. For students not already required to have parent involvement in the planning process, including the development of a plan, a process will need to be developed. Additional program and student data collection will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that most districts will have in place

policies and procedures which may require some changes, but at low cost. The Kentucky Department of Education (KDE) will work with the Kentucky School Boards' Association (KSBA) to develop model policies. As many students identified under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504) will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Data requirements will be electronically collected through the existing statewide student information system (Infinite Campus) and financial management system and chart of accounts (MUNIS).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More students in alternative school settings will graduate college and career ready. Districts will have better information on the cost and effectiveness of programs to make better placement decisions.

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

(a) Initially: The administrative regulation will require Department staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in implementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(b) On a continuing basis: The administrative regulation will require Department staff time to assist districts with implementation, and in the future, costs for professional development to provide training on best practices identified through this system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department general funds and local district funds as may be required.

(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 are required by this administrative regulation. The provisions of this administrative regulation may be implemented without additional funds at this time.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and 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. KRS 156.070, 156.160, 20 U.S.C. secs. 6301, et seq., U.S. Department of Education (USDE) No Child Left Behind Act of 2001 (NCLB) approved waiver issued pursuant to 20 U.S.C. 7861.

(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. Kentucky Department of Education (KDE) - The administrative regulation will require staff time to develop the data collection requirements and make necessary modifications to the existing systems. Inclusion of the data requirements in regulation will reduce or eliminate vendor charges for system changes. The administrative regulation will also require staff time for technical assistance to school districts in implementation, and in the future, costs for professional development to provide training on best practices identified through this system. Additional financial expenditures that may be needed for implementation are not known at this time. Local school districts - It is anticipated that most districts will have in place policies and procedures which may require some changes, but at low cost. The Department will work with the Kentucky School Board Association to develop model policies. As many students identified under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act will already have processes in place that can be used to comply with parent involvement and planning elements, similar processes for other students should not require extensive development. Data requirements are planned to be electronically collected through existing statewide systems.

(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? None.

(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? None.

(c) How much will it cost to administer this program for the first year? There is little, if any, anticipated additional cost to the Department, as responsibilities and costs will be apportioned to existing staff and fiscal resources. It is expected that local school district costs will be minimal, as the administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost, and with minimal burden to local school districts.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that responsibilities and costs can continue to be apportioned among existing resources at both the state and local levels.

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: Kentucky's approved waiver from the U.S. Department of Education No Child Left Behind Act of 2001 (issued pursuant to 20 U.S.C. 7861) included the Individual

Learning Plan Addendum (ILPA) process as a part of the state's recognition, accountability, and support systems. Subsequent to a review of Kentucky's initial application, the USED required the Department to include additional activities designed to support and engage English language learners, students with disabilities, and other disenfranchised students, which was accomplished by adding the ILPA process and other supports. Approval of the waiver was conditioned upon the inclusion of these elements. The administrative regulation was designed to work with existing processes to meet the requirements, to do so at low cost, with minimal burden to local school districts.