

STATEMENT OF CONSIDERATION
Relating to 704 KAR 19:002
(Amended After Comments)

I. The public hearing on 704 KAR 19:002 scheduled for November 26, 2012 at 1:00 p.m. in the State Board Room, Kentucky Department of Education (KDE) was canceled; however, written comments were received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Tara Grieshop-Goodwin, Deputy Director	Kentucky Youth Advocates (KYA)
Kathy Adams, Director of Public Policy	Children's Alliance (CA)
Rebecca Ballard DiLoreto, Litigation Director	Children's Law Center (CLC)

III. The following people from the promulgating administrative body attended this public hearing or responded to the written comments:

<u>Name and Title</u>
Kevin C. Brown, Associate Commissioner and General Counsel
David Wickersham, Assistant General Counsel
Susan Allred, Associate Commissioner
Sherri Clusky, Program Consultant
Debbie Hendricks, Policy Advisor

IV. Summary of Comments and Responses

(1) Subject Matter: Improvement of the quality of education in Kentucky's alternative education programs

(a) Comment: Commenter stated that the regulations represent a significant advancement on behalf of students and families. She noted the proposed regulations accomplish a number of important steps in that they: differentiate between voluntary and involuntary programs; give more definition to the types of alternative programs; include provisions for collecting data on the student population; track more complete

- information to ensure fiscal accountability; require policies covering entry and exit procedures; require participation in extracurricular activities; require curriculum alignment with KBE standards; and include parents as a part of the planning meetings involved with placement. The changes will improve the educational experience for students participating in these programs.
- (b) Response: No changes have been made. The KDE concurs with the positive comments.

(2) Subject Matter: Development and monitoring of Individual Learning Plan Addendum (ILPA)

- (a) Comment: The commenter stated that the requirement for the development of an ILPA was a positive addition to alternative education programs. The commenter encouraged KDE to add provisions for rigorously monitoring the quality of the ILPAs to ensure they serve their intended purpose.
- (b) Response: No change has been made. KDE concurs with the comment that development of an ILPA will be a beneficial step for students in these programs, but regrets that at this time, no funding is available to support the type of rigorous monitoring of ILPA quality requested. KDE is promulgating this regulation to begin collection of more detailed, baseline, data on these programs, but realizes that this regulation will not be able to address immediately all stakeholder concerns. KDE monitoring will occur through collection and public reporting of data, which will be analyzed and used to guide future direction of work in this program area.

(2) Subject Matter: Program offerings

- (a) Comment: No change has been made. The commenter requested that language be changed in Section 2 (2) of the regulation by deleting the words “strive to” to assure that more than one type of program is available to serve eligible students.
- (b) Response: Changes have been made in response to this comment. KDE has revised the proposed regulation as requested and provided additional language to clarify the intent of the regulation. The regulatory language was an attempt to make sure that students who may need services other than a traditional six-hour day have access to various, high-quality program alternatives in order to meet their needs. Revised language will serve to clarify this issue.

(3) Subject Matter: Local policies and procedures

- (a) Comment: The commenter requested that the phrase “as necessary” be deleted from Section 2 (2) and the term “annually” be inserted to require annual review of policies and procedures.
- (b) Response: Changes have been made in response to this comment. KDE has revised the proposed regulation to clarify that policies will be developed initially and reviewed annually to determine needed changes; rather than being reviewed on an “as needed” basis.

- (4) Subject Matter: Data
- (a) Comment: The commenter requested that KDE ensure that data collected will provide information on program entrance and exit dates and voluntary versus involuntary placements, and that data will be capable of being linked to information on school disciplinary actions such as suspension and expulsions.
- (b) Response: A change has been made in response to this comment. Rather than specify discreet items of data in the regulation, KDE has written Section 5 of the regulation broadly to assure the ability to collect the variety of data that may be necessary to draw conclusions and to identify future program needs. Revised language will serve to clarify this intent. Entrance and exit dates and voluntary or involuntary placements are currently being planned for collection, as are linkages with disciplinary data.
- (5) Subject Matter: Insufficiency of public funding for host facilities of residential programs for state agency children
- (a) Comment: The commenter expressed concerns about the insufficiency of public funding for education costs incurred by host facilities of residential programs for state agency children. The commenter stated that school districts housing these programs should not be financially responsible for educational costs of a student coming from a different part of the state; that education dollars should not be used to fund costs that should be the responsibility of the Cabinet for Health and Family Services; and that funding received by the facility for non-education purposes should not have to be used to supplement educational expenses.
- (b) Response: No change has been made in response to this comment. This regulation relates to collection and tracking of data and information on district-operated alternative school programs, not programs for state agency children. Issues regarding funding of state agency children programs are beyond the scope of this regulation, and statutory revision may be necessary to address the commenter's concern.
- (6) Subject Matter: Fiscal Accountability
- (a) Comment: The commenter acknowledged the steps the proposed regulation takes to ensure appropriate financial data is collected for each alternative education program operating within school districts. The commenter asked that special attention be given to dedicated and categorical dollars, and that information should be collected on educational costs assumed by state agency programs. She recommended the following language be added to Section 4:

“Districts shall track the educational costs and expenditures incurred by the program facility of A6 Programs serving children in state agency care offered off-site. Districts shall also track the distribution of dedicated and categorical funding to alternative education programs to ensure such programs have adequate resources to match the needs of their student population.”

Another commenter also requested that Section 4 be amended to require districts to collect data from the host agencies of state agency children programs so that their legitimate school-related costs and expenditures will also be tracked.

- (b) Response: No change has been made in response to this comment. Regarding a requirement that districts track the distribution of dedicated and categorical funds, the regulation contains a requirement that districts use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative program operating in the district. The expectation is that the higher-level data that is initially collected pursuant to the regulation will be analyzed to determine the more in-depth, specific data requirements that will be necessary to provide the complete picture regarding funding of alternative programs.

The comment appears to request that the regulation require local school districts to track the educational costs and expenditures incurred by the state agency residential program in which the students are placed. Requests related to state agency residential programs are outside the scope of this regulation, which addresses district alternative programs. Further, it is the position of KDE that it is beyond the purview of KDE to require school districts to track expenditures of a non-district owned program. The school district has no control over these expenditures to determine if they are appropriate or needed. Asking districts to establish such a mechanism, then track and report these expenditures, would impose an undue burden. Additionally, the school district does not approve these expenditures, yet would be asked to report them as if they were under district control.

(7) Subject Matter: Teacher Quality

- (a) Comment: The commenter supports the inclusion of language to ensure teachers and administrators assigned to alternative education programs comply with appropriate statutes regarding certification. The commenter requested the inclusion of language encouraging the application of best practices in professional development for teachers and administrators who work in alternative education programs.
- (c) Response: No change has been made in response to this comment. KDE is currently designing best-practice professional development for alternative program staff, including training on use of the ILPA, for delivery across the state.

Summary of Statement of Consideration and
Action Taken by Promulgating Administrative Body

The Kentucky Board of Education has reviewed the comments and as a result has amended the administrative regulation as follows:

Page 2

Section 2(1)

Line 17

After "shall", delete the following:
strive to

Page 2

Section 2 (1)

Lines 18-20

After "limited", insert the following:
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

Delete the following:
to one (1) type of program offering to students

Page 3

Section 2 (2)

Line 1

After "shall", insert the following:
adopt and annually review

Delete the following:
review and adopt

Page 3

Section 2 (2)

Line 2

After "procedures", delete the following:
as necessary

Page 5

Section 5

Line 2

After "system", insert or