

**STATEMENT OF CONSIDERATION  
RELATING TO 704 KAR 3:035  
Annual Professional Development Plan**

**Kentucky Department of Education  
Office of Next Generation Learners**

**Amended After Comments**

1. A public hearing was scheduled on the above regulation on August 30, 2013 at 10:00 a.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 500 Mero Street, 1<sup>st</sup> Floor, Frankfort, Kentucky, but was cancelled when no one indicated that they wanted to speak.

2. The following individuals submitted written comments:

| <u>Name and Title</u>                    | <u>Agency/Organization/Entity/Other</u> |
|--|---|
| Mary Ann Blankenship, Executive Director | Kentucky Education Association (KEA)    |
| Stephanie Winkler, President             | Kentucky Education Association (KEA)    |

3. The following people from the promulgating administrative body responded to the written comments:

| <u>Name and Title</u>  |
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| Kevin C. Brown, General Counsel/Associate Commissioner, Office of Guiding Support Services |
| David Wickersham, Assistant General Counsel, Office of Guiding Support Services            |
| Robin Chandler, Policy Advisor, Office of Next Generation Learners                         |
| Karen Kidwell, Director, Program Standards, Office of Next Generation Learners             |

**Summary of Comments and Responses**

1. Subject Matter: Professional Learning and the school council

(a) Comment: The commenters stated that the proposed changes to 704 KAR 3:035 violate KRS 160.345 (2)-(3), which provides that the school councils are to adopt policies that govern most operations of the school, including professional development. The commenters expressed concern that new professional development programs are being required at schools in derogation of school council authority.

(b) Response: The agency recognizes the authority of school councils as provided by KRS 160.345. The amendment of the regulation does not decrease the authority of school councils. The regulation is consistent with local control of the responsibility for planning professional learning experiences that meet the standards enumerated in 704 KAR 3:345 Section 1(a) – (f).

In an effort to guide the decisions and practices of all persons with the responsibility to fund, regulate, manage, conceive, organize, implement, and evaluate professional

learning, the regulation describes the attributes of effective professional learning. The regulation provides parameters for those wishing to increase the effectiveness of professional learning, but does not prescribe specific professional learning events, structures, or plans.

The commenters submit that Board of Education of Boone County vs. Bushee, 889 S.W.2d 809 (Ky. 1994), stands for the proposition that no agency (such as the Kentucky Department of Education) in the executive branch of state government has the authority to use its regulatory power to change the statutory governance model established in KRS 160.345. The agency respectfully disagrees that the holding of Bushee restricts the agency's authority to the extent proposed by the commenters.

The General Assembly has required the agency, through KRS 156.095, to establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools. The holding in Bushee focused on the grant of authority to school councils made through KRS 160.345 and the inability of school districts to require school councils to submit their exercises of KRS 160.345 power to the district for review and approval, where no such requirement was provided in statute.

Bushee does not address purported conflict between the statewide program required by KRS 156.095 and local governance as contemplated by KRS 160.345. The Court in Bushee noted that the case did not address the division of responsibility that exists between the state and local levels. Bushee does not provide rules of decision that dictate that the agency abdicate its statutory obligations and defer to a school council on the establishment, direction, and maintenance of a statewide program of professional development.

In response to these comments, and to promote clarity and consistency with KRS 156.095, KRS 160.345, and Bushee, the agency will replace the word "program" with "plan."

2. Subject Matter: The phrase "several times per week"
  - (a) Comment: The commenters expressed concern that the use of the phrase "several times per week" in the proposed amendment to the regulation introduces a new requirement that would force school councils to restructure and extend the workday for teachers and local school administrators.
  - (b) Response: The amendment of the regulation is not intended to force changes in every schedule for every teacher. Rather, the amendment is intended to acknowledge that educators regularly focus intentional efforts upon planning, analyzing student work, reflecting on instructional practices, engaging with peers in collaborative professional learning, and designing learning experiences that meet the needs of students. Each of these activities is a form of professional learning, and should be recognized and prioritized as such.

The theme of time recurred during the Professional Learning Task Force (PLTF) meetings of 2012. KEA was represented in March 8, April 25, June 26, September 12 and

October 24, 2013 PLTF meetings. Members of the Commissioner’s Teacher Advisory Committee (composed of classroom teachers) attended the September and October PLTF meetings. The PLTF recommended amendment to KRS 156.095, which amendment has not occurred. The agency then proposed to amend this regulation to contain the general requirements, but not the time requirements, proposed by the PLTF.

In response to these comments, and to clarify the intent of the amendment of the regulation, the agency will replace “several times per week” with “be ongoing.”

3. Subject Matter: Shared accountability for student growth

- (a) Comment: The commenters stated that the educators providing input into Kentucky’s Professional Growth and Effectiveness System (PGES) have rejected the idea of “shared accountability,” which phrase appears in the proposed amendment to the regulation.
- (b) Response: The agency’s use of the word “accountability” in the proposed amendment to the regulation was not intended to convey or imply the formal accountability that has been deliberated during the development of the Professional Growth and Effectiveness System.

The agency intended to emphasize the sharing of responsibility, and to thereby acknowledge that when educators learn and work together to meet the needs of each student, better results are achieved. This choice of words was consistent with the literature of the field of professional learning.

The theme of collaboration recurred during the PLTF meetings of 2012. KEA was represented in March 8, April 25, June 26, September 12, and October 24, 2012 PLTF meetings. The minutes of those meetings reflect discussion of the importance of collaboration to meet the needs of students.

The Standards for Professional Learning from Learning Forward, the international association solely focused on effective professional learning practices, elaborates:

“Within learning communities, peer accountability rather than formal or administrative accountability ignites commitment to professional learning. Every student benefits from the strengths and expertise of every educator when communities of educators learn together ... the more one educator’s learning is shared and supported by others, the more quickly the culture of continuous improvement, collective responsibility, and high expectations for students and educators grow.”

In response to these comments, the agency will clarify its intent by replacing the word “accountability” with “responsibility.”

4. Subject Matter: Recommend language for Section 1 (4).

- (a) Comment: Commenters suggested the addition of the words “relevant” and “useful” to the phrase “sustained and coherent.”

- (b) Response: The agency agrees with these valuable comments, and will add the suggested language.

5. Subject Matter: School improvement plans

- (a) Comment: The commenters stated that by requiring, in Sections 2 and 4, that schools and districts incorporate their professional development plans into their school and school district improvement plans, the agency is overstepping its authority.

The commenters stated that 703 KAR 5:225 vests development of comprehensive district and school improvement plans in school councils, and not in the Kentucky Board of Education.

- (b) Response: The agency has carefully considered these comments. KRS 156.095 (5) states as follows:

The department [Kentucky Department of Education] shall assist districts and school councils with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.

The statute thus anticipates that school and district improvement plans will include strategies for professional development, and compels the agency to assist districts and school councils with the development of those plans. The agency cannot discharge its statutorily imposed obligation to ensure that school and district improvement plans include strategies for professional development without reviewing those plans to determine whether they contain the required elements. The incorporation of professional development plans through Sections 2 and 4 of the amended regulation complies with the agency's obligations under KRS 156.095. No changes will be made in response to these comments.

The present version of the regulation requires alignment of professional development with the school or district improvement plan or with individual professional growth plans of teachers. The agency has not proposed to change to this portion of the regulation.

6. Subject Matter: Role of Professional Development Coordinator

- (a) Comment: The commenters stated that the professional development coordinator is a resource to the schools and their district, and can only perform services upon request by the school council or district employees.

- (b) Response: The agency has carefully considered and researched these comments. KRS 156.095 (2) (a) directs that the duties of the position of professional development coordinator shall be established by the Kentucky Board of Education through the promulgation of administrative regulations. KRS 156.095 does not restrict the services of a professional development coordinator as suggested by the commenters.

The regulation does not redefine and restrict the role of the professional development coordinator to that of a resource person who disseminates professional development

information and provides technical assistance upon request. Instead, the professional development coordinator is to ensure the quality of information and guidance and to thereby promote optimal conditions for all educators to grow. By focusing on standards-based practices, data, resources, learning designs, implementation, and outcomes, the professional development coordinator will provide essential information and leadership to districts, SBDM councils, and individual teachers.

No changes will be made in response to these thoughtful comments.

7. Subject Matter: Four (4) days of professional development for education personnel

- (a) Comment: Commenters stated that the proposed deletion of the reference to the required “four (4) days of the minimum school term which are mandated” does not and cannot remove that requirement from KRS 156.095. Commenters added that removing the words “education personnel” and replacing those words with “teachers” does not affect the statutory requirement that other professional staff and education personnel be provided professional development.
- (b) Response: The agency has carefully considered these valuable comments and agrees that the proposed deletions do not affect statutory requirements. In response to these comments, and to promote clarity, the agency will restore the statutory reference.

8. Subject Matter: Appropriate facilitators for professional development

- (a) Comment: Commenters noted the importance of qualified and competent presenters to facilitate professional development programs.
- (b) Response: In reviewing this positive comment, the agency determined that third-party facilitators were omitted from the list of facilitators in Section 1 (3) (d), and the regulation has been amended to include such parties.

9. Subject Matter: Professional development, the work day, and the instructional day

- (a) Comment: Commenters stated that sections 1 (3) (f), 4 (3), and 5 (2) (e) restructure and extend the workday of teachers and local administrators, and make educators participate in professional development meetings before, during, and after the instructional day.
- (b) Response: The agency has carefully considered these comments. The concern raised regarding Section 1 (3) (f) was addressed in Subject Matter 2 of this Statement of Consideration. Both the present and amended versions of the regulation, in Section 4 (3), state that professional development shall not supplant any of the six (6) hour instructional day. Section 5 (2) (e) of proposed amendment, in discussing the duties of the district professional development coordinator, lists “[p]roviding technical assistance to school councils on scheduling to allow for job-embedded professional learning opportunities during the school day.”

While the regulation does not discuss the workday of teachers, to eliminate possible confusion, and to accommodate the statewide practice whereby districts arrange

workdays inconsistently, the agency has removed the phrase “during the school day” from Section 5 (2) (e) of the regulation.

### **Summary of Statement of Consideration Action Taken by Promulgating Administrative Body**

The Kentucky Department of Education has responded to comments from the public regarding proposed amendments to 704 KAR 3:035. Comments requested the addition of specific language, and the replacement of other language. In many instances, the language provided by commenters was adopted.

Commenters stated that the administrative regulation was attempting to limit the authority granted to school councils in KRS 160.345. The use of the word “program” instead of “plan” led the commenters to believe that the agency was requiring the use of a professional development program designed by the agency in each school. To avoid confusion, the word “program” will be replaced with “plan”.

Commenters expressed concern that the use of the phrase “occurs several times per week” in the administration regulation would extend the work day for teachers and administrators. To avoid confusion, the agency is replacing the phrase “occurs several times per week” with “be ongoing.”

In response to concerns about the use of the phrase “shared accountability,” and a suggestion that this phrase might be misconstrued as the accountability implicated in teacher evaluation, the agency has substituted the word “responsibility” for “accountability.”

Commenters recommended that “relevant and useful” be added to a statement describing professional development, and this addition has been made.

Commenters expressed concern that school councils have the authority over the development of school improvement plans and that the amended regulation mandates what will be in a Comprehensive School Improvement Plan. Because the agency is mandated, by KRS 156.095, to ensure that a Comprehensive School Improvement Plan includes strategies for professional development, the regulation was not amended in response to these comments.

Commenters expressed concern that the amended regulation expands the role of the Professional Development Coordinator. Commenters suggested that the role of the Professional Development Coordinator should be limited to the performance of services upon the request of the school council. Because KRS 156.095 (2) (a) gives the Kentucky Board of Education the authority to define the duties of the Professional Development Coordinator, the regulation was not amended in response to these comments.

Commenters expressed concern that the proposed amendment to the regulation removed a reference to the four days of required professional development, and that the agency was removing a statutory requirement without statutory change. In response to these comments, and to alleviate confusion, the agency will restore the statutory reference.

Commenters stated that the substitution of the term “teacher” for “professional staff” was too narrow. In response to these comments, the agency has removed this proposed change.

Commenters noted the absence of “third party facilitators” from the list of facilitators for professional development. In response to these comments, the agency has added that reference.

Commenters stated that schools are statutorily required to have six (6) hours of instruction, that professional development cannot supplant instruction, and suggested that the phrase “during the school day” would introduce confusion. In response to these comments, the agency has removed the phrase “during the school day.”

The agency proposes the following amendments after comments:

**Page 1**

**Necessity, Function, and Conformity**

**Line 13**

After “development activities”, restore “four (4) days of the minimum school term which are mandated to be”.

**Page 1**

**Necessity, Function, and Conformity**

**Line 14-15**

After “professional development activities for”, restore “the professional staff”.  
Remove “teachers.”

**Page 2**

**Section 1(3) (c)**

**Line 17**

After (c), insert “Occurs among educators who share responsibility for student growth;”.  
Delete “Occurs among educators who share accountability for student growth;”

**Page 2**

**Section 1(3) (d)**

**Line 19**

After “instructional coaches”, insert “third-party facilitators”.

**Page 2**

**Section 1(3) (f)**

**Line 21**

After (f), insert “be on-going”.  
Delete “Occurs several times per week.”

**Page 2**

**Section 1(4)**

**Line 22**

After “means”, insert “a sustained, coherent, relevant, and useful professional learning”.

Delete “a sustained and coherent professional learning”.

**Page 3**

**Section 2**

**Line 4**

After “professional development”, insert “plan”.

Delete “program”.

**Page 3**

**Section 2**

**Line 7**

After “professional development”, insert “plan”.

Delete “program”.

**Page 3**

**Section 2**

**Line 9**

After “professional development”, insert “plan”.

Delete “program”.

**Page 3**

**Section 2**

**Line 11**

After “implementation of the”, insert “plan”.

Delete “program”.

**Page 3**

**Section 2**

**Line 12**

After “professional development”, insert “plan”.

Delete “program”.

**Page 7**

**Section 5(2) (e)**

**Line 6**

Delete “during the school day”.

**Page 7**

**Section 5**

**Line 8**

After “development”, insert “plan”.

Delete “program”.



**Page 7**

**Section 5**

**Line 18**

After “professional development programs”, insert “plan’s”.  
Delete “program”.

**Page 8**

**Section 7**

**Line 5**

After “professional development programs”, insert “plans”.  
Delete “programs”.