

**STATEMENT OF CONSIDERATION  
RELATING TO 703 KAR 5:080  
Administration Code for Kentucky's Educational Assessment Program**

**Kentucky Department of Education  
Office of Assessment and Accountability**

**Amended After Comments**

1. A public hearing was scheduled on the above regulation on January 23, 2014 at 2:00 p.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 500 Mero Street, 1st 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>
Marilyn Mayo, District Assessment Coordinator	Boyd County Schools
Mary W. Ruble, Assistant Executive Director	Kentucky Education Association (KEA)

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

<u>Name and Title</u>
Kevin C. Brown, General Counsel/Associate Commissioner, Office of Guiding Support Services
Rhonda Sims, Director, Division of Support and Research
Bridget Stanfield, Branch Manager, Division of Support and Research
Cindy Greer, Education Consultant, Division of Support and Research
Kathy Moore, Education Consultant, Division of Support and Research
Patsy Kenner, Allegations Coordinator, Office of Guiding Support Services
David Wickersham, Assistant General Counsel, Office of Guiding Support Services

## Summary of Comments and Responses

### (1) Subject Matter: Security of testing materials and the supervision of students

Marilyn Mayo

(a) Comment: The commenter questioned whether the document incorporated by reference (administration code) intended to state that a student should not be left alone with test materials at any time, and not only during a testing session.

(b) Response: The agency agrees with the commenter that the administration code should clarify that students are not to be alone with test materials at any time.

Language was changed to state that students are not to be left alone at any time with test materials.

### (2) Subject Matter: Submission of test materials that are not to be scored

Marilyn Mayo

(a) Comment: The commenter indicated a discrepancy in the administration code directions for the submission of test items that are taken for disciplinary purposes and that are not to be scored. The administration code states that the retaken item is to be marked “NOT TO BE SCORED” and then provides that such items “shall be submitted for scoring to the testing contractor.”

(b) Response: The agency has reviewed this comment and agrees that items that are retaken for disciplinary purposes should not be submitted to contractors. Testing contractors often do not accept materials that are not to be scored.

Language was changed to direct submission of items retaken for disciplinary purposes to the agency.

### (3) Subject Matter: Procedures to report a concern regarding assessment materials

Marilyn Mayo

(a) Comment: The commenter pointed out that identifying concerns by test form number or letter may not be efficient, as the manner in which test forms are identified varies among testing contractors. The commenter suggested that more general wording should be used so as to apply to all tests.

(b) Response: The agency has carefully considered this comment and confirmed that not all test vendors use the format of number and letter to identify test forms. Because the regulation

applies to all state-required assessments, and a problem with materials could occur with any state-required assessment, the directions should be general.

The agency amended the language to “test form identification” which indicates whatever number, letter, or combination is used by a particular testing vendor.

(4) Subject Matter: Reporting an error in assessment materials  
Marilyn Mayo

(a) Comment: The commenter stated that the administration code contains awkward phrasing in directing those reporting an error in assessment materials to summarize and/or document the error. The commenter suggested that, if a summary is given, then documentation has occurred and there is no need for an “and/or” statement.

(b) Response: The agency agrees with the commenter and changed the language to clarify that a summary serves as the needed documentation.

(5) Subject Matter: Violations of the administration code that need not be reported  
Marilyn Mayo

(a) Comment: The commenter indicated that a section of the administration code suggests that a violation involving a student who should receive accommodations, but did not receive those accommodations, implies that the student should provide their own accommodations.

(b) Response: The agency has reviewed this comment and agrees that amendment is necessary to provide clarification. The agency has changed the word “have” to “were.”

(6) Subject Matter: Investigation of an anonymously reported allegation  
Marilyn Mayo

(a) Comment: The commenter expressed concern that the administration code, as written, suggests that an anonymous allegation may only be investigated if the allegation is submitted in writing. The commenter suggested that anonymous allegations should also be investigated when submitted by telephone.

(b) Response: The agency has carefully considered this comment. Since the last revision of the regulation, the agency’s practice has been to accept and investigate anonymous allegations submitted either in writing or by telephone. Accordingly, the agency has added language to indicate that anonymous allegations submitted by telephone will also be investigated.

(7) Subject Matter: The use of verbal and non-verbal prompts and cues

## KEA

(a) Comment: The commenter noted that reminding students to attend to task through verbal and non-verbal prompts and cues is a technique routinely used by all teachers with all students and is a generally accepted practice of test administration. The commenter did not request any amendment.

(b) Response: The agency agrees with this thoughtful comment and, as no amendment was requested, no change has been made in response.

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

The Kentucky Department of Education has responded to comments from the public regarding proposed amendments to 703 KAR 5:080. Comments requested the addition of specific language and the replacement of other language. In making requested amendments, the agency identified punctuation, layout changes, and phrasing changes that were necessary to provide clarity of meaning.

In response to concerns about the security of testing materials and the supervision of students, the agency has amended language to state that students are not to be left alone at any time with test materials.

In response to concerns about the submission of test materials that are not to be scored, the agency has amended language to provide that items retaken for disciplinary purposes are to be submitted to the agency.

In response to concerns about the procedures to report a concern regarding assessment materials, the agency has amended the administration code to include the phrase “test form identification.”

In response to a comment regarding violations of the administration code that need not be reported, the agency has amended language to provide clarification.

In response to a comment regarding the investigation of an anonymously reported allegation, the agency has added language to indicate that anonymous allegations submitted by telephone will also be investigated.

As no amendment was requested, the agency has made no amendment in response to a comment regarding the use of verbal and non-verbal prompts and cues.

The agency proposes, after comments, the following amendments to the administration code, incorporated by reference into 703 KAR 5:080:

Page 12, Not Acceptable column, first entry-Students being left alone to take the test  
Removed “in a room to take the test” and replaced with “at any time with test materials”.

Page 15, Acceptable column, third entry- Test Item Retaken for Disciplinary Purposes  
Clarified that retaken items for disciplinary purposes are submitted to the Kentucky Department of Education and not to the testing contractor.

Page 18, Number 2 for reporting a concern regarding assessment materials  
Removed “number or letter” and replaced with identification, added “test” before word “form”.

Page 18, Number 3 for reporting a concern regarding assessment materials  
Removed “and/or document”. Removed “documentation” and replaced with “summary”.

Page 19, Allegations that need not be submitted, last bullet  
Removed “have” and replaced with “were”.

Page 19 Step 2, Investigation of an anonymously reported allegation  
Added “or by phone call”.

Table of Contents

Page 2

Page numbers aligned.

Pages 6, 7, 8, 10, 11, 17, 20, 21

Punctuation (commas, semi-colons, capitalization, hyphens) was revised for consistent formatting.

Pages 6, 9, 12, 15, 19, 20, 21

Words were added and removed to improve readability and clarity and to correct typographical errors.

Pages 15, 16

Three entries under the Not Acceptable column were rearranged to better match entries in the Acceptable column, making the entries consistent with the rest of the document.

Page 17

Revised language for clarity. Removed “this Administration Code, and the conditions under which each student uses the accommodations as described in the student's IEP, 504 Plan, or PSP.” and replaced with “the conditions under which each student uses the accommodations as described in the student's IEP, 504 Plan, or PSP. Individuals shall also receive Administration Code training and agree to”.