

**STATEMENT OF CONSIDERATION
RELATING TO 703 KAR 5:070
Inclusion of Special Populations in the State-Required Assessment and Accountability
Programs**

**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 canceled 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>
Teresa T. Combs, Director of Legal and Administrative Training Services	Kentucky School Board Association (KSBA)
Malicia T. Hitch, Staff Attorney	Protection and Advocacy
Mary W. Ruble, Assistant Executive Director	Kentucky Education Association (KEA)

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

Name and Title
Kevin C. Brown, General Counsel/Associate Commissioner, Office of Guiding Support Services
Felicia Cumings Smith, Associate Commissioner, Office of Next Generation Learners
Ken Draut, Associate Commissioner, Office of Assessment and Accountability
Johnny Collett, Director, Division of Learning Services
Sammie Lambert, Assistant Director, Division of Learning Services
Denise Bailey, Branch Manager, Division of Learning Services
Rhonda Sims, Director, Division of Support and Research
Bridget Stanfield, Branch Manager, Division of Support and Research
Joy Barr, Education Consultant, Division of Support and Research
Cindy Greer, Education Consultant, Division of Support and Research
Kathy Moore, Education Consultant, Division of Support and Research
Kevin O'Hair, Education Consultant, Division of Support and Research
David Wickersham, Assistant General Counsel, Office of Guiding Support Services

Summary of Comments and Responses

(1) Subject Matter: Student initiation of accommodations KSBA and KEA

(a) Comment: A commenter suggested that the document incorporated by reference is unclear about whether the provision that students are to initiate accommodations, unless the district has data that the child cannot request the accommodation, is to apply to all types of accommodations. The comment indicated that it is confusing if the student-initiated statement was not repeated in all the accommodation sections.

A commenter stated that the formal decision-making process set out in a student's individualized learning plan may conflict with the requirement that accommodations be student initiated. The commenter suggested that if an ARC has determined that a student lacks capacity or is developing capacity to initiate accommodations, but still has not reached the point where independent decision-making regarding the use of accommodations is the norm, suddenly forcing the student to make independent decisions regarding the use of accommodations and also forcing the student to initiate those requests during testing seems extreme and counterproductive. The commenter suggested that the educational interests of students are best served by allowing them to initiate accommodations during testing, but not requiring them to do so.

A commenter stated that requiring students to request or initiate readers or scribes means that school districts will be required to have trained readers or scribes available for each student in case a request is made, even though readers or scribes may not be used. The commenter suggested that if a student does not understand that the student needs to specifically request assistance (accommodation) during testing, not only will the student miss an opportunity to be appropriately assisted during the testing process, the school district will also have pointlessly gone to the expense of identifying, training and compensating readers and scribes that may never be used.

(b) Response: The agency has carefully reviewed these comments and agrees that clarifying statements are needed. The agency does not intend to add a process outside of existing processes for individualized planning. Rather, the agency's intent is to ensure that the decision-making process around accommodations intentionally include discussions concerning how districts will determine whether the accommodations it selects are effective, as well as plan to fade those accommodations, as appropriate. The agency's approach is based, in part, on the agency's ongoing monitoring of school districts and the general absence of documentation showing that these discussions are presently occurring as part of the decision-making process. This does not conflict with the requirement that accommodations be student-initiated.

The agency will amend the document incorporated by reference to clarify student initiated accommodations. The agency notes that schools must make accommodations available. The agency will amend the document incorporated by reference to better define the concept of student initiated. Amendments provide that teachers or proctors may review available accommodations, remind students they are there to provide the accommodations and to revisit this information before each test session. Teachers may ask if a student wants to use their accommodations, and an affirmative response from the student is considered student initiated.

If a student's primary means of communication is through an interpreter, then the student is not required to initiate the use of the accommodation. If the student uses an interpreter only on occasion, or in certain content areas, student initiation is expected.

The agency will amend the document incorporated by reference to clarify an accommodation that requires interaction with the teacher or proctor in order for the accommodation to be effective. Behavior Modification Plans are supports to help the student stay focused on the task. It is not expected that a student would announce being off task or in need of behavior redirection. These two accommodations require the teacher to observe and make decisions about when the student has lost focus and is in need of redirection.

(2) Subject Matter: The destruction of testing materials
KSBA

(a) Comment: The commenter expressed a concern that the mandatory destruction of certain testing materials might violate the Kentucky Records Retention Schedule for Public School Districts.

(b) Response: No change has been made in response to this thoughtful comment. The agency contacted the Kentucky Department of Libraries and Archives (KDLA) to share the provisions of the regulation and the concern raised in this comment. The paper test documents are considered the official or "record copy". What would be temporarily stored on a computer, cd, or flash drive, and contemplated for destruction, would be copies of the original document. Once test documents are printed, the printed copies become the official version, allowing all 'copies' of the original to be destroyed without violation of the Kentucky Records Retention Schedule.

(3) Subject Matter: The use of assistive technology
Protection & Advocacy

(a) Comment: The commenter shared a concern that assistive technology is evolving at a rapid pace and that some devices or programs may not be compatible with the state test from year to year. The commenter questioned how students and teachers will be certain that assistive

technology will be compatible with current state tests and will avoid disruption due to incompatible technology. The comment did not request a specific amendment.

(b) Response: The agency has carefully considered this valuable comment and agrees with the commenter that technology is rapidly changing. The agency strives to provide the state assessment in the best and latest formats possible within the guidelines given by legislation.

Vendors, technology, and budget all impact what will and will not be available in any given year. The agency makes every effort to find the most effective and efficient way of assessing all students.

The agency offers training each year for all assessments in order to update and keep educators informed of what is new or changing. The training includes the assessment of special populations and how the Department is working to meet their needs. The agency will continue to work with districts and teachers to determine what technology is compatible with the assessment for the current year.

(4) Subject Matter: Extended Time

Protection & Advocacy

KEA

(a) Comment: One commenter expressed concern regarding student requests for extended time and when such requests may be made. The commenter requested clarification regarding who decides whether a student is demonstrating on task efforts and whether a student is making progress and should be granted or denied extended time. The commenter also inquired whether extended time could be withdrawn, once granted, and about the duration of extended time.

A commenter inquired about the mechanism for requesting extended time, whether a student must request a specific amount of time, and when the student must request extended time.

(b) Response: The agency has carefully considered these important comments. Because a student would not know in advance of making the request whether the student will need extended time, extended time would be requested by the student when normal testing time has ended or is about to end. To request extended time, the student need only indicate to the proctor or teacher that the student is not finished and wishes to use extended time to finish the test; the student would then be given extra time, provided that the student had demonstrated on-task behavior during the regular schedule testing time.

As indicated by current guidance provided by the agency, schools arrange to have a place for students who require extended time to continue working in the event that a student needs to use

additional time. The agency provides training each year regarding accommodations and how they should be offered and provided to students.

As with instructional time, some accommodations require frequent interaction and monitoring by a proctor or teacher as a student works on an assessment. A student using an audio accommodation may start and stop an audio player. A student with a human reader will listen and then stop while answering questions. For a student to receive extended time, the student must be working on the test. Using the same judgment used during instructional time, the teacher or proctor will determine if the student has been on-task. If the student has made progress and is giving effort to complete the assessment, the student would receive extended time.

(5) Subject Matter: Size of allowable graphic organizer
KEA

(a) Comment: A commenter stated that limiting the size of the allowable graphic organizer prompt to a 3 x 5 inch card will unnecessarily disadvantage severely visually impaired students, and requested that the regulation make a reasonable allowance for this subpopulation of students.

(b) Response: The agency has carefully considered, and agrees with this valuable comment. The agency will amend the regulation to permit students with visual impairments and who require large-print materials to magnify or increase the 3 x 5 inch card to a size that is usable for the student.

(6) Subject Matter: Prompting and cueing
KEA

(a) Comment: A commenter stated the regulation specifies that prompts and cues shall only include verbal and non-verbal (gestural, written or visual) prompts and cues to attend to task. The commenter stated that, accordingly, prompting and cueing are not accommodations, but are instead instructional techniques that should be available for use with all special population students regardless of whether such use is specifically spelled out in an IEP or 504 Plan. The commenter noted that the Administration Code for the State Assessment and Accountability Program (incorporated by reference into 703 KAR 5:080) states, for all students, “words of encouragement and general instructions that direct students to apply themselves to the task at hand, but do not imply evaluation of student work or allow an advantage are permissible.” The commenter suggested that the regulation permits prompting and cueing for all students to stay on task, while inadvertently restricting those techniques to special population students who have a specific reference to such techniques in an IEP or 504 plan. The commenter suggested that the language requiring the technique to have been previously considered by the ARC be removed.

(b) Response: The agency has carefully considered this thoughtful comment, and agrees that 703 KAR 5:080 permits all test takers verbal and non-verbal (gestural, written or visual) prompts and cues to attend to task. The agency agrees that reference to prompting and cueing is no longer needed in 703 KAR 5:070, and will make an amendment to delete such references. This regulation is confined to assessment, and specific references to prompting and cueing in an IEP or 504 plan designed for instructional purposes may be appropriate.

(7) Subject Matter: Readers repeating directions, prompts, situations, and passages without a specific request from student

KEA

(a) Comment: The commenter stated that a reader should be permitted to repeat directions, prompts, situations and passages without a specific request from the student. The commenter stated that students, particularly younger ones, often communicate confusion through non-verbal cues, and educators are trained to pick up on those cues and offer appropriate support. The commenter suggested that the requirement of a specific request from a student imposes a pointless barrier to an acceptable accommodation and provides an unfair advantage to older students and students who will know to take advantage of the requirement.

(b) Response: The agency has carefully considered this thoughtful comment. The time limits of test administration do not logistically permit all information to be re-read by a reader. The agency notes that implementing the suggested change would vest the decision of whether to re-read information with the proctor. If student confusion triggers re-reading, the agency submits that it is reasonable to assume that a proctor will, correctly, think a student is confused when the student selects an incorrect response. The decision to re-read could thus provide students with an unintended evaluation of their work during a testing situation, and could increase allegations of inappropriate testing practices. Consequently, no amendment has been made in response to this comment.

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 5:070. Comments requested the addition of specific language, the replacement of other language, and the reconsideration of certain components of the document incorporated by reference into the regulation. In making amendments, the agency identified punctuation, layout changes, and phrasing changes that were necessary to provide clarity of meaning.

Commenters requested clarification regarding student initiated accommodations. The agency will amend the document incorporated by reference to better define the concept of student initiated. Amendments will clarify that teachers or proctors may review available accommodations, remind students they are there to provide the accommodations, and to revisit this information before each test session. Teachers may ask if a student wants to use their accommodations, and an affirmative response from the student is considered student initiated.

A commenter expressed a concern that the mandatory destruction of certain testing materials might violate the Kentucky Records Retention Schedule for Public School Districts. This thoughtful comment prompted additional research by the agency, which indicated that no amendment was necessary.

A commenter shared a concern that assistive technology is evolving at a rapid pace and that some devices or programs may not be compatible with the state test from year to year. The comment did not request a specific amendment, and none was made in response to this comment.

A commenter expressed concern regarding student requests for extended time and when such requests may be made. The commenter requested clarification regarding who decides whether a student is demonstrating on task efforts and whether a student is making progress and should be granted or denied extended time. The commenter also inquired whether extended time could be withdrawn, once granted, and about the duration of extended time. The commenter did not request a specific amendment, and none was made in response to this comment.

A commenter stated that limiting the size of the allowable graphic organizer prompt to a 3 x 5 inch card will unnecessarily disadvantage severely visually impaired students, and requested that the regulation make a reasonable allowance for this subpopulation of students. The agency agrees with this insightful comment, and has amended the document incorporated by reference accordingly.

A commenter stated the regulation specifies that prompts and cues shall only include verbal and non-verbal (gestural, written or visual) prompts and cues to attend to task. The commenter stated that, accordingly, prompting and cueing are not accommodations, but are instead instructional techniques that should be available for use with all special population students regardless of whether such use is specifically spelled out in an IEP or 504 Plan. The agency agrees with this comment and has amended the document incorporated by reference.

A commenter stated that a reader should be permitted to repeat directions, prompts, situations and passages without a specific request from the student. The agency has carefully considered this thoughtful comment and determined that implementing the suggested change would vest the decision of whether to re-read information with the proctor. Concerned that a proctor's unrequested decision to re-read could provide students with an unintended evaluation of their

work during a testing situation, and could increase allegations of inappropriate testing practices, the agency has made no amendment in response to this comment.

The agency proposes the following amendments after comments:

Page 5

Section: General Conditions For Using Accommodations (A) (1), add a statement about interpreters in the following sentence: Student initiated applies to assistive technology (when it is not the student's primary mode of communication), "Interpreter (when it is not the student's primary mode of communication)", manipulatives, reader, scribe, calculator, paraphrasing, and extended time.

Page 5

Section: General Conditions for Using Accommodations (A) (1), add as the last sentence, "Behavior Modification is not student initiated because it is an accommodation that requires teacher monitoring and interaction. The proctor or instructor should continue with behavior modifications to stay on task during the state assessments in the same manner as they have during instruction."

Page 7, 16, 30, 34, and 37

Remove references to prompting and cueing.

Page 10

Section 1(1)

First paragraph, second to last sentence remove "their only form of standard" and replace it with "the student's primary mode of".

Page 13

Section 1 (2)

Add "enlargement of 3x5 card for visually impaired students."

Page 17

Section 2

First bullet, remove "and are not to be consecutive." Add a period after "cumulative."

Page 19

Section 2

Fifth bullet, remove ", if specifically requested by the student." Add a period after "readers."

Page 19

Section 2

First paragraph, remove “Simplified language replaced paraphrasing but provides very similar supports.”

Page 20

Section 2

First bullet, remove bullet and after easier add “for the student to understand.”

Page 24

Section 3(1)

Second sentence remove “only form of standard” and replace with “primary mode of”.

Page 25

Section 3 (1)

First paragraph, remove “If it is necessary for a student with a 504 Plan to complete written work (including responses to test items) on a computer and this accommodation is noted on a student’s 504 Plan and if this procedure is routinely used in the student’s regular instructional program, it may be used when responding to constructed- or extended-response questions, short-answer and on-demand writing while participating in the state-required assessment.”

Replace with “If it is necessary for a student with a 504 Plan to complete written work (including responses to test items) on a computer and the accommodation is noted in the 504 plan and used routinely in regular instruction, it may be used on the state-required assessment.”

Page 26

Section 3 (2)

Third paragraph, first sentence remove “allowed, students” and replace with “offered, a student.”

Page 31

Section 5(2)

First bullet, Remove “If participation in the state-required assessment would jeopardize a student’s physical, mental or emotional well-being, a school or district shall submit a request for a medical non-participant, which is subject to the approval of KDE and which describes the medical condition that warrants a student not participating in some or all portions of the assessments.”

Replace with “if participation in the state-required assessment would jeopardize a student’s physical, mental or emotional well-being, a school or district shall submit a medical non-participation request which describes the medical condition that warrants a student not participating in some or all portions of the assessment. The request is subject to the approval of KDE.”

Page 31

Section 5

Last paragraph, first sentence, remove “Section 2” and replace with “the General Conditions for Using Accommodations section.”

Pages 3, 4, 9, 13, 14, 15, 17, 18, 21, 22, 25, 36

Spacing and alignment corrections were made for consistency.

Pages 19, 20, 29

Bullets were changed for consistency.

Pages 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 20, 21, 23

Punctuation was corrected for consistency.

Pages 3, 7, 19

Capital letters were added and removed for consistency.

Pages 3, 5, 6, 10, 16, 20, 23

Subject/verb tenses were corrected for consistency.

Pages 7, 8, 9, 12

Adverb tense corrections made for consistency.