

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

703 KAR 5:070, Inclusion of Special Populations in the State-Required Assessment and Accountability System (Regulation and document incorporated by reference)

Commissioner's Recommendation:

The Commissioner recommends approval of revisions to 703 KAR 5:070 to remove the requirement for students to initiate testing accommodations. Since the revisions implement formally an agreement to a policy change between the Kentucky Department of Education (KDE) and the United States Department of Education, Office of Civil Rights (OCR), the Commissioner recommends the Kentucky Board of Education only do the one reading of this regulatory change.

Rationale:

To revise the regulation and document incorporated by reference that governs testing accommodations during the administration of state-required assessments and to implement an action step in the agreement with the OCR to meet OCR's deadline and be in compliance with federal requirements.

703 KAR 5:070 uses a document incorporated by reference to communicate the requirements for the administration of testing accommodations. The revision removes the need for students to initiate the use of testing accommodations. This change was implemented, based on the OCR agreement, for spring 2016 testing via training and communication. Revising the regulation document formalizes the change and more clearly communicates the rules for testing accommodations to the public, parents, assessment administrators and testing proctors.

Applicable Statute or Regulation:

KRS 158.6453; KRS 158.6455; 703 KAR 5:070

Action Question:

Should the Kentucky Board of Education approve the revisions to 703 KAR 5:070 regarding student initiation of accommodations that implements the agreement between KDE and OCR?

History/Background:

Existing Policy: A student with disabilities may qualify to use testing accommodations during state-required assessments with an appropriate Individualized Education Plan (IEP). Also, Kentucky students with a 504 Plan or Program Services Plan (for English language learners) are permitted testing accommodations. The creation and review of these plans require parent involvement and approval.

In February 2014, Kentucky completed a revision of 703 KAR 5:070 that governs testing accommodations. While the concept that students must initiate the use of their testing accommodations was not new, a greater emphasis was placed on student initiation throughout the regulation. During the 2014 revision process, a clarification on student initiation was added. It stated that testing proctors must remind students, at the beginning testing, of the specific accommodations available to them and ask students if they wished to use the accommodation. Whether students used the accommodation or declined it, schools must plan for and be prepared to offer appropriate accommodations for each student. The emphasis on students initiating was to mirror a classroom best practice of building student independence and self-advocacy. Student initiation of accommodations was not expected of students with the most severe disability who participate in the alternate assessment program. This greater emphasis on student initiation in the February 2014 version of 703 KAR 5:070 was highlighted in training and communication for 2014-15 testing.

Summary: Following testing in spring 2015, a Kentucky parent of a student who used testing accommodations filed a complaint with the OCR regarding the accommodation policy that students must initiate the use of their accommodations during testing. The parent complaint and OCR's position stipulated that parents agree to an accommodation plan for their children during the annual meetings to review individualized education plans and that asking students to initiate accommodations during testing places them in an inappropriate decision-making role.

KDE's perspective was that the parent complaint to OCR highlighted an unintended consequence of the student-initiated accommodation. KDE signed a Resolution Agreement on November 30, 2015 with OCR to remove student-initiation language. KDE has submitted monitoring reports to OCR on December 17, 2015 and March 10, 2016 to document the completion of several action steps in the agreement.

KDE action steps that have been completed include the following:

- Communicate with local districts to cease the policy and practice of requiring students with disabilities to initiate requests for testing accommodations during the administration of statewide assessments.
- Inform local districts that accommodations and related aids and services for students with disabilities shall: 1) be determined by the student's placement team; 2) be determined in advance of the administration of the statewide assessments; and 3) shall be done in conformance with the legal requirements of Section 504

of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II).

- Train individuals involved with test administration for students with disabilities.
- Submit amendments to regulation 703 KAR 5:070 for OCR review.

In a letter received from OCR dated September 15, 2016, KDE received feedback that amendments to 703 KAR 5:070 conform to the provisions of the OCR agreement.

Following the December KBE meeting, KDE will document for OCR the KBE action and the related communications regarding the revised regulation to Superintendents, District Assessment Coordinators and the public.

The revised version of 703 KAR 5:070 and document incorporated by reference, as approved by OCR, is attached. Deletions are shown with strikethroughs and additions are underlined. All revisions are shown with bold font. Revised pages are as follows:

Inclusion of Special Populations Document:

Cover page – Date change

Pages 4-5

Page 10

Pages 12-14

Page 17-20

Page 23

Pages 25-27

Budget Impact: Implementation of the agreement changes have been handled within the routine annual training and communication processes. There is no impact to the state budget.


Groups Consulted and Brief Summary of Responses:

The District Assessment Coordinators Advisory Group was consulted on the training and communication efforts regarding the removal of student-initiation. Feedback on the change has been consistently positive.

Also, the Local Superintendent's Advisory Council will review the regulation at its next meeting and provide comments to the board prior to the December KBE meeting.

Contact Person:

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A handwritten signature in blue ink that reads "Stephen L. Pruitt". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Commissioner of Education

Date:

December 2016