EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

703 KAR 5:280. School Improvement Procedures.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) indicates the primary function of the Kentucky Board of Education (KBE) is to adopt policies and administrative regulations by which the Kentucky Department of Education (department) shall be governed in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters which are within the administrative responsibility of the department. KRS 158.6453(3)(a) vests in the KBE the responsibility to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to establish appropriate consequences for schools failing to meet their

accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of a school's turnaround for schools identified for comprehensive support and improvement under KRS 160.346. KRS 160.346 defines comprehensive and targeted support and improvement and establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the creation of state-wide exit criteria for identified schools, additional action to support schools continuously not meeting improvement goals, and additional supports for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, (20 U.S.C. 6311(c) and (d)) requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Adequate performance progress" means:

(a) Meeting the exit criteria outlined in KRS 160.346(2)(b); and

(b) Meeting the exit criteria outlined in KRS 160.346(2)(a).

(2) "Advisory leadership team" means the team established in KRS 160.346(7)(g);

(3) "Annual improvement" means a school reaches annual goals, established by the department, in the areas that led to identification for comprehensive support and improvement;

(4) "Audit" means the process outlined in KRS 160.346(5) and (6);

(5) "Audit team" means the team selected by the LEA pursuant to KRS 160.346(5) to complete a

school and district audit;

(6) “Charter school” means a “public charter school” as defined in KRS 160.1590(12);

(7) “Charter school board of directors” or “governing board” has the same meaning as in KRS 160.1590(6);

(8) “Comprehensive Support and Improvement” means the process for schools identified pursuant to KRS 160.346(3);

(9) “District” or “school district” means the local school district governed by a local board of education;

(10) "District audit" means an audit that:

(a) Reviews the functioning of the district and the district’s ability to manage an intervention in a school identified for comprehensive support and improvement; and

(b) Meets the requirements of KRS 160.346(6);

(11) “Evidence based interventions” has the same meaning as in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20 USCA § 7801;

(12) “Local education agency” or “LEA” means a local school district as provided in KRS 160.010 and KRS 160.020 or a charter school board of directors as provided in KRS 160.1590;

(13) “Minority” has the same meaning as in KRS 160.345(1)(a);

(14) "School audit" means an audit that:

(a) Reviews the functioning of a school;

(b) Assesses principal capacity for leadership of school turnaround; and

(c) Meets the requirements of KRS 160.346(6);

(15) “School improvement assistance” means a program designed by the department to support improved teaching and learning;

(16) “School improvement plan” means the plan created by schools identified for targeted support and improvement pursuant to KRS 160.346(4) and is embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225;

(17) “Targeted Support and Improvement” means the process for schools identified pursuant to KRS 160.346(2);

(18) “Turnaround plan” means the plan created pursuant to KRS 160.346(1)(e) and is embedded in the comprehensive school improvement plan required under 703 KAR 5:225; and

(19) “Turnaround team” means the team selected pursuant to KRS 160.346(1)(f).

Section 2. Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school’s identification for comprehensive support and improvement, an LEA shall, within thirty (30) days:

(a) Declare intent to either utilize the department for the audit team or another option available under KRS 160.346(5); and

(b) Declare intent to either utilize the department for the turnaround team or another option available under KRS 160.346(7).

(2) If the LEA declares intent to use any option other than the department for the audit team, the LEA shall provide the following information:

(a) The name(s) and address(es) of all persons included on the audit team;

(b) The role(s) and responsibilities of all persons included on the audit team;

(c) The occupations and any vendor affiliations of all persons included in the audit team; and

(d) The persons’ or entity’s documented expertise in diagnosing the causes of an organization’s low performance and providing advice and strategies resulting in effective turnaround leadership.

(3) If the LEA declares intent to use any other option other than the department for the audit

team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these to the department and provide information regarding the LEAs work to remedy the conflicts of interest.

(4) If the LEA declares intent to use any option other than the department for the turnaround team, the LEA shall provide the following information:

(a) The name(s) and address(es) of the persons or entity fulfilling the status of turnaround team;

(b) The role(s) and responsibilities of the persons or entity fulfilling the status of turnaround team; and

(c) The evidence-based interventions that shall be utilized by the persons or entity fulfilling the status of turnaround team.

(5) Should the LEA utilize a private entity as the turnaround team for a school, the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations.

(6) Upon receipt of the notification and appropriate information from the LEA, within fifteen (15) days the department shall review the proposals for non-department audit teams and turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

(7) The LEA shall provide the information required in this Section utilizing the "LEA Notification of Non-Department Audit or Turnaround Team" form incorporated by reference in this regulation.

Section 3. Audit Team Membership. (1) For audit teams not directed by the department:

(a) Members of the audit team shall be selected by the LEA from qualified applicants;

(b) The team members shall complete department approved training in any areas needed to

effectively perform their duties;

(c) Members shall hold appropriate certification or qualifications for the position being represented;

(d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;

(e) The audit team shall include the following representation:

1. The chairperson, who shall be designated by the LEA, and shall be;

i. A certified administrator; or

ii. A similarly qualified professional approved by the department.

2. A teacher who is actively teaching or has taught within the last three (3) years;

3. A principal who is currently serving or has served as a principal within the last three (3) years;

4. An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;

5. A parent or legal guardian who has or has had a school-aged child; and

6. A university representative who is currently serving or has served in that capacity within the last three (3) years;

(f) The chair may serve in addition to the five (5) members outlined in subsection (1)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (1) of this section.

(2) For audit teams directed by the department:

(a) Members shall be selected from qualified applicants by the department, and approved by the Commissioner of Education, or designee;

(b) Members shall complete department-provided or approved training in any areas needed to

effectively perform their duties;

(c) Members shall hold appropriate certification or qualifications for the position being represented;

(d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;

(e) The team shall include the following representation:

1. The chairperson, who shall be designated by the department or its designee, and shall be:

i. A certified administrator approved by the department to provide school improvement assistance;

ii. A certified administrator member of the review team; or

iii. A similarly qualified professional approved by the department;

2. An individual approved by the department to provide school improvement assistance;

3. A teacher who is actively teaching or has taught within the last three (3) years;

4. A principal who is currently serving or has served as a principal within the last three (3) years;

5. A LEA administrator who is currently serving or has served in a LEA administrative position within the last three (3) years;

6. A parent or legal guardian who has or has had a school-aged child; and

7. A university representative who is currently serving or has served in that capacity within the last three (3) years.

(f) The chair may serve in addition to the six (6) members outlined in subsection (2)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (2) of this section.

Section 4. School Audit. (1) Within forty-five (45) days of a school's identification for

comprehensive support and improvement, a school audit shall be scheduled.

(2) A school audit shall consist of and incorporate the following into the report, in addition to the requirements of KRS 160.346(6):

(a) Analysis of state and local education data;

(b) An analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement and whether or not the principal should be replaced;

(c) Review of comprehensive school improvement plans and other planning documents;

(d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school council minutes and agendas, if applicable; and

(h) Other information deemed necessary by the Commissioner of Education, or designee.

(3) Where the audit team is directed by the department, the recommendation of the principal's ability to lead the intervention in the school shall be based upon an assessment of whether:

(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal establishes a data-driven system for curriculum, instructional design, and

delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal ensures that systems are in place for accurate collection and use of data;

(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(4) An audit team not directed by the department may utilize the criteria in subsection (3) of this Section for the recommendation of principal capacity. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as a leader in school intervention and turnaround at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria in subsection (3) of this Section, they shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.

(5) Upon identification as a school in need of comprehensive support and improvement, the authority of the school council shall be suspended.

(6) Pursuant to KRS 160.346, the authority of the school council **may** [~~shall~~] be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.

(7) Charter schools shall be subject to a school audit which shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:

(a) Analysis of state and local education data;

(b) A review of the governing board's level of functioning and recommendation to the Commissioner of Education as to whether the governing board has the capacity to manage the intervention in the charter school;

(c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members.

(d) Direct observations;

(e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(f) Review of charter school governing board minutes and agendas; and

(g) Other information deemed necessary by the Commissioner of Education, or designee, to assess the functionality of the governing board to support school improvement.

(8) If the audit team chooses not to use the criteria in subsection (7) of this Section, they shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be utilized to the department for approval.

Section 5. District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

(a) Analysis of state and local education data;

(b) A review of the district's level of functioning and recommendation to the Commissioner of Education as to whether the district has the capacity to manage the intervention in each identified school;

(c) Review of comprehensive district improvement plan and other planning documents;

(d) Interviews with local board members, students, parents, school and district personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school board minutes and agendas; and

(h) Other information deemed necessary by the Commissioner of Education, or designee, to assess the functionality of the district to support school improvement.

(4) Where the audit team is directed by the department, the determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas:

(a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The district leads and operates under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The district ensures that systems are in place for accurate collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

(5) An audit team not directed by the department may utilize the criteria in subsection (3) of this Section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement, pursuant to KRS 160.346. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria in subsection (3) of this Section, they shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.

(6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.

Section 6. Notification to Schools and LEAs of Audit Findings. (1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the Commissioner of Education.

(2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to Commissioner of Education who shall make

a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.

(3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the Commissioner of Education shall notify in writing the school, district, or charter governing board and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(7)(c)-(e).

Section 7. Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1)(a) Within thirty (30) days after the audit findings are released, the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(7)(h). The turnaround team shall be selected pursuant to the requirements of KRS 160.346(7)(a):

(b) Should the LEA utilize a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall ensure compliance with Section 2 of this regulation and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team. **[~~The LEA shall provide this information to the department quarterly.~~]**

(c) Should the LEA utilize the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

1. Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and

2. At least one (1) parent of a student in the identified school is selected as a member of the turnaround team.

(d) Should the LEA utilize the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the Commissioner of Education, or designee, to provide school improvement assistance.

(3) The turnaround plan shall include:

(a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;

(b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and

(c) A review of resource inequities which shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement.

(4) The turnaround team shall, no later than thirty (30) days after the turnaround team is on site, present the turnaround plan to the LEA, which shall give final approval, provide the necessary support and resources for the turnaround plan, and submit the turnaround plan to the Commissioner of Education for approval.

(5) (a) Following receipt of the turnaround plan specified in this paragraph and before the beginning of the school year following the audit, the Commissioner of Education in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the Commissioner of Education finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the

department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 8. Advisory Leadership Team. (1) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(2) Meetings of the advisory leadership team shall be open to be public;

(3) Duties of the advisory leadership team shall include:

(a) Providing support for systems that seek to build capacity in school leadership;

(b) Promoting positive school climate and culture; and

(c) Supporting the continual use of data-driven decision-making to support school improvement.

Section 9. Monitoring and Periodic Review of Plan Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 USCA § 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff **when the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346 or when more rigorous intervention by the department is warranted as described in Section 10 of this regulation**;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor.

(3) **Periodic review of the turnaround plan shall include:**

(a) Periodic site visits;

(b) Direct observation; and

(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members **[~~Periodic review of the turnaround plan shall include quarterly reporting on the implementation and results of the turnaround plan. Quarterly reporting shall be submitted to the department~~].**

Section 10. More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the Commissioner of Education.

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as described in subsections (1) and (2) in this Section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as described in subsection (2) of this Section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall

occur every two (2) years, or as deemed necessary by the Commissioner of Education. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 11. Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225;

(2) LEAs with schools identified for targeted support and improvement shall monitor and provide support to the school so as to ensure the successful implementation of the school improvement plan.

Section 12. Significant Number of Schools: (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement or targeted support and improvement, the department shall notify LEAs as to whether or not they shall be considered a LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

(2) To determine whether a LEA meets this designation, the department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement and the LEA's percentage of schools identified for targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement and whose percentage of identified schools exceeds ten (10) percent for either comprehensive support and improvement or targeted support and improvement schools shall be

designated a LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

Section 13: Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement and shall receive the following technical assistance:

(a) A district audit, or school audit if a charter school, conducted by the department; and

(b) Onsite support from department staff.

(2) The district audit, or school audit if a charter school, completed by the department under subsection

(1)(a) of this Section shall take the place of any district or school audit conducted under Sections 4 and 5 of this regulation.

(3) Department staff shall: (a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;

(b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;

(c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and

(d) Work with the LEA to develop sustainable systems to support school improvement.

Section 14. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement shall receive the following technical assistance:

(a) Periodic site visits; and

(b) Onsite support by department staff.

(2) Department staff shall:

(a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;

(b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and

(c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 15. Exit Criteria. (1) Schools identified for comprehensive support and improvement shall exit that status when:

(a) They no longer meet the criteria for their identification; and

(b) They demonstrate continued progress on the data that were the basis for the identification.

(2) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit when all relevant exit criteria are met.

(3) Schools identified for targeted support and improvement under KRS 160.346(2)(a) shall exit that status when the identified subgroup(s) is no longer below the performance of all students in the bottom five (5) percent of Title I schools or non-Title I schools within that range of Title I schools and demonstrate continued progress on the data that served as the basis for identification.

(4) Schools identified for targeted support and improvement under KRS 160.346(2)(b) shall exit that status when the identified subgroup(s) is no longer below the performance of all students in the bottom ten (10) percent of Title I schools or non-Title I schools within that range. LEAs may include additional exit criteria at their discretion.

Section 16. Incorporation by Reference. (1) "LEA Notification of Non-Department Audit or Turnaround Team Form", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

_____	_____
(Date)	Stephen L. Pruitt, Ph.D. Commissioner of Education
_____	_____
(Date)	Mary Gwen Wheeler, Chairperson Kentucky Board of Education

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 703 KAR 5:280
Contact Person: Kevin C. Brown kevin.brown@education.ky.gov
Phone Number: 502-564-4474

(1) Provide a brief summary of:
(a) What this administrative regulation does: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), 20 U.S.C 6301, requires states receiving Title I Part A funding to adopt a system of accountability and support for low-achieving schools. The state is required to identify schools for comprehensive and targeted support and improvement based on state adopted criteria (that meet federal guidelines) and provide turnaround support for those schools by working with school and district leaders. SB 1 (2017) also requires the Kentucky Board of Education (KBE) to promulgate administrative regulations for the identification of schools for comprehensive and targeted support and improvement, as well as assistance and intervention. This regulation establishes that system of support and ongoing accountability in compliance with ESSA and SB 1 (2017).

(b) The necessity of this administrative regulation: The amendments to this regulation are required for alignment to the State Plan, as submitted to the United States Department of Education. This regulation reflects the essential functions and requirements under Title I Part A, as reauthorized under the ESSA.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060 and KRS 156.070. It also aligns with the requirements under the ESEA, 20 U.S.C 6301, as reauthorized by the ESSA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: ESSA requires states to identify schools for comprehensive and targeted support and improvement based on state adopted criteria (that meet federal guidelines) and provide turnaround support for those schools by working with school and district leaders. This regulation establishes that system of support and ongoing accountability in compliance with ESSA.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statute: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local

governments affected by this administrative regulation: Those affected by this regulation include: all public schools, school districts, and the KDE as it is tasked with providing guidance, support, technical assistance, and monitoring and periodic review of school improvement plans under ESSA.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts already receive similar support as under No Child Left Behind (NCLB), ESSA's predecessor, and the Kentucky NCLB Waiver. This regulation reflects federal requirements and districts have been part of the transition process since the federal legislation was passed in December of 2015. Schools and local education agencies that are identified will need to develop and implement improvement plans that address the issues that led to their identification. KDE as it is tasked with providing guidance, support, technical assistance, and monitoring and periodic review of school improvement plans under ESSA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KDE provides the supports indicated in the regulation through the use of state and federal funding. The school and district level supports come at no charge to schools and districts if conducted by the department. However, SB 1 (2017) created flexibility for school districts and allows them to select audit teams and turnaround teams not associated with the department. The districts must bear the cost of audit and turnaround teams if they select an entity other than KDE for these services. SB 1 (2017) does provide for some reimbursement for this cost, but it is no more than what the department has budgeted for such costs. KDE has requested for the 2018-2020 biennial budget to include $500,000 for this reimbursement allowance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supports provided in this regulation will lead struggling schools and districts to sustainable turnaround through the implementation of systems that build capacity in school leadership, establish positive school climate and culture, and support continual use of data-driven decision-making to support school improvement.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The KDE is required by ESSA to provide support, monitoring and technical assistance to schools and districts with low-performing schools. This requirement existed prior to the ESSA reauthorization. As a result, there is no initial cost for monitoring and support. Federal funding is utilized for this work. KDE submitted an ABR for the 2018-2020 biennial budget to include $500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to

available funds.

(b) On a continuing basis: As a result of the continuing obligation in ESSA to provide support, monitoring and technical assistance to schools and districts, KDE incurs an ongoing cost of staff and resources. State and federal funding is utilized for this work. KDE submitted an ABR for the 2018-2020 biennial budget to include $500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title I Part A and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this point it is unclear as to whether the number of identified schools will increase as a result of the changes in the state accountability system. An increase could result in the need for additional funding or, if none exists, differentiated support.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 703 KAR 5:280
Contact Person: Kevin C. Brown kevin.brown@education.ky.gov
Phone Number: 502-564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and KDE.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. With regards to supports offered by the department, this should not have a significant impact as state and federal funding is utilized for this work. Additionally, the supports provided in this regulation are the same as those provided previously under NCLB and the Kentucky Waiver. With regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include $500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? The KDE is required by ESSA to provide support, monitoring and technical assistance to schools and districts with low-performing schools. This requirement existed prior to the ESSA reauthorization. As a result, there is no initial cost. Federal funding is utilized for this work. However, with regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include $500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(d) How much will it cost to administer this program for subsequent years? As a result of the continuing obligation in ESSA to provide support, monitoring and technical assistance to schools

and districts, KDE incurs an ongoing cost of staff and resources. Federal and state funding is utilized for this work. However, with regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include $500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

Summary Page - Incorporation by Reference

703 KAR 5:280. School Improvement Procedures

The following document is incorporated by reference:

(1) “LEA Notification of Non-Department Audit or Turnaround Team Form”, February 2018. The document incorporated by reference consists of five (5) pages. This document is the form local education agencies use to notify the Department of Education if the LEA is not going to use Department human resources to conduct the audit or staff the turnaround team.

STATEMENT OF CONSIDERATION
RELATING TO 703 KAR 5:280
School Improvement Procedures.

Kentucky Board of Education
Department of Education

Amended After Comments

1. A public hearing was scheduled on the above regulation for March 22, 2018 at 10:00 a.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky but was cancelled when no one registered to attend or attended the hearing.

2. The following individuals submitted written comments:

Name and Title	Agency/Organization/Entity/Other
Dr. Joe Burks	Education Policy Analyst, Kentucky Senate Majority

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

Name and Title
Dr. Kelly Foster, Associate Commissioner, Office of Continuous Improvement and Support
Kevin C. Brown, Associate Commissioner and General Counsel, Office of Legal, Legislative and Communication Services
Todd Allen, Deputy General Counsel, Office of Legal, Legislative and Communication Services
Whitney A. Crowe, Policy Advisor, Office of Continuous Improvement and Support

Summary of Comments and Responses

(1) Subject Matter: Statutory authority for promulgating this regulation.

(a) Comment: Commenter requests the following underlined language be added beginning on line 3 of page 2 of the regulation: "KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of a school's turnaround for school identified for comprehensive support and improvement under KRS 160.346, which shall be limited to performing an annual review of the school's state assessment data and measures of school quality, periodic site visits, observation, and interviews of representative stakeholders and students."

(b) Response: The agency carefully reviewed these comments.

KRS 13A.120(1)(a) states, "An administrative body may promulgate administrative regulations to implement a statute only when the act of the General Assembly creating or amending the statute specifically authorizes the promulgation of administrative regulations…." KRS 158.782 requires the Kentucky Department of Education ("KDE" or "department") to promulgate administrative regulations establishing the monitoring and review of turnaround plans for schools identified for comprehensive support and improvement and, accordingly, KDE properly proposed 703 KAR 5:280 in order to fulfill this statutory mandate.

Regarding the language the commenter recommends be adopted in the regulation, this wording is verbatim to that set forth in KRS 158.782(1), which states: "The monitoring and review process *shall be limited to performing an annual review of the school's state assessment data and measures of school quality, periodic site visits, observation, and interviews of representative stakeholders and students*." (emphasis added)

KRS 13A.120(2)(e) prohibits an administrative body from promulgating administrative regulations "[w]hen a statute prescribes the same or similar procedure for the matter regulated." Because the language the commenter recommends be adopted in the regulation is already prescribed in statute and because the inclusion in the regulation of matters already set forth in statute is prohibited by law, KDE declines to adopt the repetitive text from KRS 158.782 in 703 KAR 5:280.

Further, KRS 13A.120(4) states, "Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable." The decision not to incorporate language proposed by the commenter is necessary to protect 703 KAR 5:280 from being "null, void, and unenforceable" under KRS 13A.120.

No amendments have been made in response to these comments.

(2) Subject Matter: Membership of audit teams not directed by the Kentucky Department of Education.

(a) Comment: Commenter requests the deletion of Section 3(1)(b), (c), (e), and (f), all of which pertain to membership on audit teams not directed by KDE.

(b) Response: The agency carefully considered these comments.

The commenter suggests 703 KAR 5:280, Section 3(1), pertaining solely to audit teams not led by KDE, only delineate that "[m]embers of the audit team shall be selected by the LEA from qualified applicants" and that "[t]he team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review." While KRS 160.346 does give local boards of education discretion to select a turnaround audit team, the statute does not grant such discretion without reasonable limitation and does not otherwise preclude KDE from establishing parameters around the composition of all turnaround audit teams, whether led by KDE or not.

KRS 13A.010(2) defines "administrative regulation" as a "statement of general applicability promulgated by an administrative body that implements, *interprets*, or prescribes law or policy…." (emphasis added) As enacted, KRS 160.346(5)(a) states, "The local board of education shall select a turnaround audit team with *documented expertise* in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership." (emphasis added) 703 KAR 5:280, Section 3 interprets what constitutes "documented expertise" for audit teams members on teams not led by KDE as well as for those on teams led by KDE in alignment with KRS 13A.010(2). Without the interpretation and clarification offered in the regulation regarding "documented expertise," turnaround audit teams could vary widely with particular disparity existing between audit teams not directed by KDE and those that are directed by KDE to the detriment of those schools identified for comprehensive support and improvement.

Further, 703 KAR 5:280, Section 3 establishes the same requirements for turnaround audit teams not led by KDE as it does for those led by KDE. It should be noted the commenter does not suggest changes to 703 KAR 5:280, Section 3(1), pertaining to audit teams led by KDE.

As proposed, 703 KAR 5:280, Section 3(1)(e) requires members on audit teams not directed by KDE to include the following: a chairperson designated by the local education agency who is either a certified administrator or is a similarly qualified professional approved by the department; a teacher who is actively teaching or has served in such capacity within the prior three years; a principal who is currently serving or has served in such capacity within the prior three years; a local education agency administrator who is currently serving or has served in such capacity within the prior three years; a parent or legal guardian who currently has or previously had a school-aged child; and, a university representative who is currently serving or has served in such capacity within the prior three years. The proposed regulation also imposes this same requirement on audit teams directed by KDE, and audit teams directed by KDE already include these designated representatives and have done so since 2010.

As proposed, 703 KAR 5:280, Section 3(1)(f) allows a chairperson on audit teams not directed by KDE to serve in addition to the other members outlined in Section 3(1)(e) or to be selected from those members who also meet the qualifications outlined in Section 3(1). The proposed regulation also gives audit teams directed by KDE this same discretion.

As evidenced above, the regulation creates no disparity between the composition of audit teams not directed by KDE and those that are directed by KDE, and this alignment was not done by accident. Audit team membership requirements in 703 KAR 5:280, Section 3(1) are aligned with audit team membership requirements in 703 KAR 5:280, Section 3(2) because these are nationally recognized best practices that have been utilized by audit teams directed by KDE for the past eight years with great success and respect.

In 2016, Mass Insight Education[1] (Mass Insight) conducted a State Diagnostic Assessment of the turnaround work being led by KDE. In the cover letter to that assessment, Dr. Susan F. Lusi,

[1] Mass Insight Education was founded in 1997 to advocate for higher standards for education. Based in Massachusetts, Mass Insight is a national leader on turnaround and has studied turnaround models from states across

President and CEO of Mass Insight, stated, "After our review of Kentucky's program, we believe that it is one of the strongest turnaround models in the nation." One of the highest overall ratings in that assessment was tied to the "Accountability" indicator, which encompassed the following guiding question:
"Does the (State educational agency, or SEA) have a clear and transparent process and criteria for identifying schools in need of turnaround?"[2] On this indicator and this guiding question, KDE was deemed "proficient," which was the highest possible rating, with specific reference being made to KDE's turnaround process beginning with an audit composed "of educators and stakeholders," including a teacher, principal, a parent, and a university faculty member in addition to KDE staff. Finally, in recommendations at the conclusion of the assessment, Mass Insight stated, "Going forward, it will be important to ensure that the current turnaround program remains central to the state's efforts to improve schools as the state adapts to ESSA and a changing political climate. (KDE's) program is a national model of turnaround practice and we recommend that the department stay the course."[2]

703 KAR 5:280, Section 3 maintains the discretion a local board has in selecting an audit team under KRS 160.346(5) while also ensuring any audit team selected, whether led by KDE or not, will further our state's longstanding, successful turnaround program.

No amendments have been made in response to these comments.

(3) Subject Matter: Components of the school audit report.

(a) Comment: Commenter requests the deletion of the following in Section 4(2), "A school audit shall consist of and incorporate the following in the report[~~, in addition to the requirements of KRS 160.346(6)~~]." In place of this language referencing requirements set forth in statute, commenter requests the regulation recite the language in KRS 160.346(6)(a)1-5 in its entirety.

Commenter also requests Section 4(3) be revised to incorporate the language in Section 4(2)(a)-(h), as proposed, after the following added language:

> (3) Where the audit team is not directed by the department,
> (a) the audit report shall be provided to the superintendent, local board of education, school principal, commissioner of education, and the Kentucky Board of Education.
> (b) the Kentucky Board of Education shall recommend the following criteria to the local board of education for a review process that a turnaround audit team may utilize to assess the turnaround leadership capacity of the principal, superintendent, and district:

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the country. In 2007, Mass Insight released The Turnaround Challenge, a research report and call to action that highlighted the need for intervention in America's lowest-performing schools. Today, Mass Insight works with schools, districts, and state education agencies across the country to drive gains in student achievement through our College Success, School Turnaround, and State Policy & Networks initiatives.

[2] Mass Insight Education (2016). Mass Insight State Development Network School Turnaround Diagnostic: Kentucky.

Commenter also requests Section 4(3), as proposed, be renumbered to become Section 4(4) in order to accommodate the change noted above.

(b) Response: The agency carefully considered these comments.

Regarding the language the commenter recommends be adopted in Section 4(2) of the regulation as proposed, this wording replaces reference to a statute with the actual language set forth in KRS 160.346(6)(a)1-5. KRS 13A.120(2)(e) prohibits an administrative body from promulgating administrative regulations "[w]hen a statute prescribes the same or similar procedure for the matter regulated." Because the language the commenter recommends be adopted in the regulation is already prescribed in statute and because the inclusion in the regulation of matters already set forth in statute is prohibited by law, the department declines to adopt the repetitive text in KRS 160.346(6)(a)1-5 in 703 KAR 5:280.

Further, KRS 13A.120(4) states, "Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable." The decision to reference the pertinent statute rather than repeat the language of KRS 160.346(6)(a)1-5 within 703 KAR 5:280, Section 4(2) is necessary to protect the regulation from being "null, void, and unenforceable" under KRS 13A.120.

As for the commenter's suggested revisions that would make the language currently in 703 KAR 5:280, Section 4(2) optional for audit teams not led by KDE, this language is necessary to implement the Elementary and Secondary Education Act of 1965 (ESSA). Specifically, under Section 1111(d)(1)(B)(iii) of ESSA, a district with a school identified for comprehensive support and improvement is required to develop and implement a comprehensive support and improvement plan that "is based on a school-level needs assessment." The audit fulfills that "school-level needs assessment" in ESSA, and the required components of the audit report set forth in 703 KAR 5:280, Section 4(2) ensure that the district has the high-quality, accurate information it needs to locally develop a comprehensive support and improvement plan that is ESSA-compliant.

Further, the school audit report components in 703 KAR 5:280, Section 4(2) are nationally recognized best practices that have been utilized by audit teams directed by KDE for the past eight years with great success and respect.

As referenced previously, Mass Insight conducted a State Diagnostic Assessment of the turnaround work being led by KDE in 2016. In the assessment, Mass Insight noted that the audit is an "important lever to help schools develop 30/60/90 day plans" as well as in creating a comprehensive school improvement plan and in establishing improvement goals.[2] Further, one of KDE's highest overall ratings in that assessment was tied to the "Strategy" indicator, which looked for a "set of aligned activities to turn around the state's lowest performing schools." Within that indicator Mass Insight posed the following guiding question: "What is the nature of the school improvement plan?" On this indicator and this guiding question, KDE was deemed "proficient," which was the highest possible rating, with specific reference given to the audit report including the following components: "[D]ata review, classroom observations, and interviews with school, district, and external stakeholders."[2]

Recognizing how important audits are to school turnaround and realizing that information gathered during the audit and supplied to stakeholders thereafter is vital to informing dynamic and sustained turnaround efforts, 703 KAR 5:280, Section 4(2) requires audit reports, whether led by KDE or not, include those components praised by Mass Insight as well as other best practices known to KDE. These necessary audit elements include the review of comprehensive school improvement plans; staff and student survey results; school-based decision making council meeting minutes; and, other information deemed necessary by the Commissioner of Education, which is intended to encompass school-specific needs as well as emerging best practices in conducting an audit. Without this regulatory language, school audit reports could vary widely with particular disparity existing between those conducted by teams not directed by KDE and audit teams that are directed by KDE to the detriment of those schools identified for comprehensive support and improvement.

No amendments have been made in response to these comments.

(4) Subject Matter: Restoration of the school council after a school exits comprehensive support and improvement status.

(a) Comment: Commenter suggests Section 4(6), as proposed, be amended to state, "Pursuant to KRS 160.346, the authority of the school council [~~shall~~] may be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years."

(b) Response: The agency carefully considered these comments.

As proposed, 703 KAR 5:280, Section 4(6) states, "Pursuant to KRS 160.346, the authority of the school council *shall* be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years." (emphasis added) This proposed regulatory language makes the restoration of the school council mandatory for the local board two years after a school exits comprehensive support and improvement.

However, KRS 160.346(13) states: "A school's right to establish a council granted under KRS 160.345 *may* be restored by the local board of education two (2) years after the school exits comprehensive support and improvement status." (emphasis added) This statutory language makes the restoration of the school council permissive for the local board two years after a school exits comprehensive support and improvement.

In light of comments received and in an effort to align the regulation with the permissive language set forth in KRS 160.346(13), 703 KAR 5:280, Section 4(6) has been amended as follows: "Pursuant to KRS 160.346, the authority of the school council [~~shall~~] may be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years." This change clarifies that a local board may restore a school-based decision making council two years after exiting comprehensive support and improvement status.

The agency amended the regulation in response to these comments.

(5) Subject matter: Justification for conducting a district audit.

(a) Comment: Commenter suggests Section 5(1) be amended to state, "A district shall be subject to a district audit [~~upon identification of a school within the district for comprehensive support and improvement~~] when it has either a significant number of schools identified for comprehensive support and improvement per section (13) of this regulation, or when one (1) or more schools in the district fail to exit comprehensive support and improvement status after three (3) consecutive years of implementing the turnaround intervention process described in KRS 160.346."

(b) Response: The agency carefully considered these comments.

As proposed, the language in 703 KAR 5:280, Section 5(1) recognizes the importance of district audits to school turnaround and acknowledges that information gathered during the audit and supplied to stakeholders thereafter is vital to informing dynamic and sustained turnaround efforts. The language is also consistent with the authority of the Kentucky Board of Education as set forth at KRS 156.070 and KRS 156.160.

A report published by the Center for American Progress[3] addresses the steps districts can take to improve success and says, "Strategies that focus only on changes at individual schools, without addressing the underlying system wide structures that allowed these schools to fail in the first place, will not achieve lasting improvement."[4] The report continues, "If a district has built successful central office processes to support its turnaround programs, it can leverage these successes districtwide."

In addition, The Center on School Turnaround[5] published a guide to assist with assessing a district's readiness to support turnaround initiatives and states, "Often, school turnaround efforts focus only on the school's structure and leadership. Rarely do policymakers or practitioners think about school turnaround as a system-level issue requiring fundamental changes in district-level practice to establish the conditions for school turnaround to succeed."[6] Regarding assessing district readiness to support turnaround, the guide asserts:

> The assessment process benefits districts and SEAs in several ways. First, it allows SEAs to have a baseline diagnostic that can guide their support and

[3] The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans, through bold, progressive ideas, as well as strong leadership and concerted action. The organization staffs policy teams in several major issue areas, including K-12, early childhood, and postsecondary education, and strives to develop ideas for policymakers that lead to real change.
[4] Baroody, K. (2011). Turning Around the Nation's Lowest-Performing Schools. Center for American Progress. Retrieved April 5, 2018, from https://www.americanprogress.org/issues/education-k-12/reports/2011/02/04/9035/turning-around-the-nations-lowest-performing-schools/.
[5] The Center on School Turnaround is operated by WestEd, a nonprofit research, development, and service agency that works with education and other communities to promote excellence, achieve equity, and improve learning for children, youth, and adults.
[6] Player, D., Hitt, D., & Robinson, W. (2014). District Readiness to Support School Turnaround. The Center on School Turnaround. Retrieved April 5, 2018 from http://centeronschoolturnaround.org/wp-content/uploads/2014/09/District_Readiness_to_Support_School_Turnaround.pdf.

> resources. The assessment process also helps districts recognize how their strengths can be leveraged, and it identifies issues that should be addressed. Finally, the readiness assessment process helps build mutual understanding and trust between the SEA and district as they begin the school turnaround process.[6]

The Center on School Turnaround concludes, "The findings (of the audit) will help the district to implement the changes that will put it in a better position to support an effective turnaround effort…The term 'school turnaround' implies that change only happens at the building level, but this view clearly is too narrow."[6]

Finally, KDE has used this auditing process since 2010 to help districts identify turnaround barriers to support struggling schools and prevent further decline. A State Diagnostic Assessment of KDE's turnaround work was conducted in 2016 by Mass Insight. A letter from Dr. Susan F. Lusi, President and CEO of Mass Insight, to Commissioner Pruitt states, "We believe that turnaround needs to be dramatic and sustained. The Kentucky model demonstrates how a state can accomplish this and improve outcomes for students." Dr. Lusi continues, "It is very impressive and we hope that the work will continue under ESSA when states have more responsibility for providing support to low performing schools."

No amendments have been made in response to these comments.

(6) Subject matter: Quarterly reports on turnaround efforts from the local education agency.

(a) Comment: Commenter suggests the following language be deleted from Section 7(1)(c), "[~~The LEA shall provide this information to the department quarterly.~~]"

Commenter also suggests reference to quarterly reporting to the department be deleted from Section 9(3). In its place, commenter suggests Section 9(3) state, "Periodic review of the turnaround plan shall [~~include quarterly reporting on the implementation and results of the turnaround plan. Quarterly reporting shall be submitted to the department~~] be limited to periodic site visits, observation, and interviews of representative stakeholders and students."

(b) Response: The agency carefully considered these comments

KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of a school's turnaround for school identified for comprehensive support and improvement under KRS 160.346 and defines periodic review to include "performing an *annual* review of the school's state assessment data and measures of school quality…." (emphasis added) Presently, 703 KAR 5:280 requires reporting by the local educational agency be done quarterly rather than annually, as set forth in KRS 158.782.

In light of comments received and in an effort to better align the regulation with the language in KRS 158.782, 703 KAR 5:280, Section 7(1)(c) has been amended to delete the following language, "[~~The LEA shall provide this information to the department quarterly.~~]" Further, 703 KAR 5:280, Section 9(3) has been amended to state: "Periodic review of the turnaround plan

shall include: (a) Periodic site visits; (b) Direct observation; and, (c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members."

Regarding language commenter recommends be added to 703 KAR 5:280, Section 9(3), this wording is nearly verbatim to that set forth in KRS 158.782(1), which states: "The monitoring and review process shall *be limited to…periodic site visits, observation, and interviews of representative stakeholders and students*." (emphasis added)

KRS 13A.120(2)(e) prohibits an administrative body from promulgating administrative regulations "[w]hen a statute prescribes the same or similar procedure for the matter regulated." Because the language the commenter recommends be adopted in the regulation is already prescribed in statute and because the inclusion in the regulation of matters already set forth in statute is prohibited by law, KDE declines to adopt the repetitive text in KRS 158.782(1) in 703 KAR 5:280.

Further, KRS 13A.120(4) states, "Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable." The decision not to incorporate language proposed by the commenter is necessary to protect 703 KAR 5:280 from being "null, void, and unenforceable" under KRS 13A.120.

The agency amended the regulation in response to these comments.

(7) Subject matter: Turnaround support provided by local educational agency.

(a) Comment: Commenter suggests Section 7(4) be revised to delete reference to local education agencies providing "necessary" support for the turnaround plan and to instead say, "The turnaround team shall, no later than thirty (30) days after the turnaround team is on site, present the turnaround plan to the LEA, which shall provide [~~necessary~~] available support and resources for the turnaround plan, request additional support from the department pursuant to KRS 160.346(8), and submit the turnaround plan to the Commissioner of Education for approval."

(b) Response: The agency carefully considered these comments.

Regarding commenters suggestion to replace "necessary" with "available," KRS 13A.120(2)(i) prohibits an administrative body from promulgating administrative regulations "[t]hat modify or vitiate a statute or its intent." Commenter's suggested language, if adopted, would effectively modify or vitiate KRS 160.346. Specifically, KRS 160.346(7)(j) says, "The turnaround plan shall be *fully* implemented by the first full day of the school year following the school year the school was identified for comprehensive support and improvement." (emphasis added) This statutory provision cannot be accomplished unless the local educational agency is required to provide, as proposed in 703 KAR 5:280, Section 7(4), "the *necessary* support and resources for the turnaround plan…." (emphasis added)

The language of 703 KAR 5:280, Section 7(4) is also consistent with KRS 160.346(7)(a), which grants local boards of education the discretion to select a turnaround team. KDE is one turnaround team option local boards have and, in fact, KRS 160.346(7)(a)3 requires a local board to select KDE to serve as the turnaround team "if the local board determines the options provided in subparagraphs 1. and 2. of this paragraph are not viable alternatives." If funding or other available resources are a concern for the local board and prevent a private entity and/or local team from being a viable turnaround team option, the statute would require the district to use KDE as the turnaround team. KRS 160.346 does not give local boards authority to select a turnaround team that cannot, for funding or other reasons, fully implement the turnaround plan as required by KRS 160.346(7)(j).

Regarding commenters suggested inclusion of language that permits local educational agencies to "request additional support from the department," there is no statutory authority for such "additional support." KRS 160.346(8) says, "To *assist* with funding the audit and turnaround intervention process described in subsections (5) and (7) of this section and not provided by the department, the department shall reimburse the school district, for a maximum of three (3) years, an amount *not to exceed* the amount budgeted by the department to serve as the turnaround team to a school under subsection (7)(a)3. of this section…." Accordingly, if and when a local district selects a turnaround that is not led by the department, as permitted by KRS 160.346(7), the department will reimburse the district in accordance with KRS 160.346(8), which limits the financial support the department provides and does not permit the local educational agency to request or the state educational agency to provide "additional support." KDE-supplied funding is expected, as stated in KRS 160.346(8), "[t]o assist" but not necessarily fully reimburse all associated costs for a district using a turnaround team not led by the department. This funding limitation is one item local educational agencies will need to keep in mind when selecting audit and turnaround teams not led by KDE.

No amendments have been made in response to these comments.

(8) Subject matter: Turnaround plan monitoring by the department.

(a) Comment: Commenter recommends the deletion of Section 9(2)(a) and (d).

Commenter also suggests the insertion of the following emphasized language in Section 9(4): "<u>The department may offer feedback and recommend strategies and adjustments in planning and implementation</u>."

(b) Response: The agency carefully considered these comments.

As noted, commenter suggests deletion of 703 KAR 5:280, Section 9(2)(a). Although KRS 158.782(1) delineates "periodic site visits" as a means for KDE to use in monitoring and periodically reviewing a local school district's turnaround plan for a school identified for comprehensive support and improvement, 703 KAR 5:280, Section 9(2)(a) has been amended to clarify, "Onsite support by department staff <u>when the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346or when more rigorous intervention by the department is warranted as described in Section 10 of this regulation</u>."

As amended in response to these comments, 703 KAR 5:280, Section 9(2)(a) is narrowly tailored to give turnaround teams led by the department the ability to offer "onsite support" without restricting turnaround teams not led by KDE to the same practices. This revision should address commenters expressed concerns while also maintaining authority for the department to utilize nationally recognized best practices that have been adopted by turnaround teams directed by KDE for the past eight years with great success and respect. As previously noted, on the 2016 assessment of KDE's turnaround work, the department scored "proficient," which was the highest possible rating, on the "Strategy" indicator, which was based in part on the following conclusions: "Focus is on equipping the field staff with the knowledge and tools necessary to work with schools and districts. There is also a strong emphasis on building systems that support students."[2]

Regarding the commenters suggested deletion of 703 KAR 5:280, Section 9(2)(d), that subsection currently says monitoring of schools identified for comprehensive support and improvement by KDE shall include, "Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor." This provision is necessary and is intended to imbed durability in the regulation by allowing KDE to bring turnaround monitoring into compliance with possible future amendments to ESSA and/or other relevant federal laws that may be adopted after the promulgation of this regulation.

Finally, commenter recommends the following language be added as 703 KAR 5:280, Section 9(4): "<u>The department may offer feedback and recommend strategies and adjustments in planning and implementation.</u>" Section 1111(d)(1)(B)(vi) of ESSA states, "[T]he local educational agency shall…locally develop and implement a comprehensive support and improvement plan…that…upon approval and implementation, *is monitored and periodically reviewed by the State educational agency*." (emphasis added) As with language already adopted in state statute, KRS 13A.120(2)(e) prohibits the promulgation of administrative regulations when federal law "prescribes the same or similar procedure for the matter regulated." Because KDE is already required under ESSA to "monitor and periodically review" implementation of a comprehensive support and improvement plan and because the inclusion in regulation of matters already set forth in statute is prohibited by law, KDE declines to include the text recommended by the commenter in 703 KAR 5:280, Section 9(4).

Further, KRS 13A.120(4) states, "Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable." The decision not to incorporate language proposed by the commenter is necessary to protect 703 KAR 5:280 from being "null, void, and unenforceable" under KRS 13A.120.

The agency amended the regulation in response to these comments.

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

The public hearing on this administrative regulation was canceled; however, written comments were received. The agency responded to the comments and amends the administrative regulation as follows:

Page 9
Section 4(6)
Line 18

After "council" insert "may" and delete "shall".

Page 13
Section 7(1)(b)
Line 18

After "team." Delete "The LEA shall provide this information to the department quarterly."

Page 15
Section 9(2)(a)
Line 17

After "staff" insert "when the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346 or when more rigorous intervention by the department is warranted as described in Section 10 of this regulation"

Section 9(3)
Line 22

After "(3)" insert "Periodic review of the turnaround plan shall include:

(a) Periodic site visits;
(b) Direct observation; and,
(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members"

Delete "Periodic review of the turnaround plan shall include quarterly reporting on the implementation and results of the turnaround plan. Quarterly reporting shall be submitted to the department"