

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Administrative Regulation)

5 701 KAR 5:150. Nontraditional Instruction Program.

6 RELATES TO: KRS 158.070

7 STATUTORY AUTHORITY: KRS 156.029, KRS 156.070, KRS 156.160, KRS 158.070

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) states that the primary

9 function of the Kentucky Board of Education (KBE) is to adopt policies and administrative

10 regulations by which the Kentucky Department of Education (department) shall be governed in

11 planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon

12 the recommendation of the Commissioner of Education (Commissioner), to establish policy or

13 act on all programs, services, and other matters which are within the administrative responsibility

14 of the department. KRS 158.070 requires the KBE to promulgate an administrative regulation to

15 prescribe the conditions and procedures for local education agencies (districts) to be approved

16 for the nontraditional instruction program. This administrative regulation establishes the

17 requirements and approval process for districts to be approved for the nontraditional instruction

18 program.

19 Section 1. Definitions. (1) “Certified employee” means an employee of a local school district

20 who is required to have a certification for his position pursuant to KRS 161.020.

21 (2) “Instructional delivery method” means the delivery system and instructional techniques to be

22 used in meeting the learning needs of students.

23 (3) “Minimum school term” or “school term” is defined in KRS 158.070(1)(b).

1 (4) “Professional learning plan” means the strategy implemented to ensure [~~certified and~~
2 ~~classified~~] staff in a local school district acquire, enhance, and refine the knowledge, skills,
3 practices, and dispositions necessary to create and support high levels of learning for all students.

4 (5) “Nontraditional instruction day” means a day during the school term that a local school
5 district is closed for health or safety reasons that is approved by the Commissioner, pursuant to
6 KRS 158.070(9), to be the equivalent to a student attendance day.

7 (6) “Nontraditional instruction plan” means the strategy approved by the Commissioner and
8 implemented by a local school district to ensure instruction on nontraditional instruction days is a
9 continuation of learning that is occurring on regular student attendance days as required by KRS
10 158.070(9).

11 (7) “Student attendance day” is defined in KRS 158.070(1)(e).

12 Section 2. Initial Application Process. (1) Using the Nontraditional Instruction Program Initial
13 Application, a district submitting a nontraditional instruction plan to be approved by the
14 Commissioner shall include:

15 (a) A description of the instructional delivery methods, including the use of technology, to be
16 used on nontraditional instruction days;

17 (b) A description of how the district will provide access to online resources, if used, and
18 equitable instructional materials for students who do not have access to the internet and for
19 students needing to access information differently;

20 (c) A description of how the district shall ensure a continuation of learning from regular student
21 attendance days will occur on nontraditional instruction days;

22 (d) A description of how the district will ensure implementation of Individual Education
23 Programs for students with disabilities, including how an Admissions and Release Committee

will be involved in planning for and making decisions related to the participation and needs of students with disabilities, on nontraditional instruction days;

(e) A description of how the district will ensure implementation of other student-specific educational plans, including Program Service Plans for English Learners, 504 Plans, and Gifted Student Service Plans for students identified as gifted and talented, on nontraditional instruction days;

(f) A description of how student participation will be measured and how evidence of student learning will be gathered on nontraditional instruction days;

(g) A description of how each job category within the district will fulfill contractual obligations on nontraditional instruction days and how employee participation will be verified on nontraditional instruction days;

(h) An explanation of the professional learning plan the district will implement to ensure certified employees have the knowledge and capacity to provide instruction on nontraditional instruction days;

(i) A description of education agencies that are external to the district but have students of the district in attendance on a part-time or full-time basis and the considerations on nontraditional instruction days that will need to be agreed upon between the district and those external education agencies;

(j) A description of stakeholder involvement in developing and implementing nontraditional instruction days;

(k) A description of how the district will relay information about nontraditional instruction days to students and families; and

(1) Other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.

(2) The department shall provide technical assistance, upon request, to districts prior to submission of the Nontraditional Instruction Program Initial Application.

(3) A district shall submit an application at least one hundred and twenty (120) days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term.

(4) A committee designated by the Commissioner shall review and recommend the Commissioner approve or deny a completed Nontraditional Instruction Program Initial Application within forty-five (45) days from receipt of the completed application.

(5) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the Commissioner shall approve or deny a completed Nontraditional Instruction Program Initial Application. The Commissioner may initially approve a district to participate in the nontraditional instruction program for up to two (2) years.

(6)(a) A district approved to participate in the nontraditional instruction program may amend its Nontraditional Instruction Program Initial Application as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain a description of the amendment, proposed timeline for implementation, and justification for the request.

(c) A committee designated pursuant to subsection (4) of this section shall review the amended Nontraditional Instruction Program Initial Application and recommend the Commissioner approve or deny such within forty-five (45) days of the amendment submission.

(d) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the Commissioner shall approve or deny an amended Nontraditional Instruction Program Initial Application. An amended Nontraditional Instruction Program Initial Application approved by the Commissioner shall be in effect for the remainder of the initial period of approval pursuant to subsection (5) of this section.

Section 3. Renewal Application Process. (1) At the end of the term of approval, a district that has used at least one (1) nontraditional instruction day during the term of approval shall be eligible to complete the renewal application process. A district not eligible to complete the renewal application process shall be eligible to apply using the Nontraditional Instruction Program Initial Application and in compliance with Section 2 of this administrative regulation.

(2) Using the Nontraditional Instruction Program Renewal Application, a returning district submitting a nontraditional instruction plan to be approved for renewal by the Commissioner shall include:

(a) A description of the nontraditional instruction program that includes:

1. Revisions to the district's nontraditional instruction program that are being proposed for the program to grow in rigor and efficacy;
2. Program adjustments that are being proposed to improve the program for stakeholders; and
3. Any changes being proposed related to how the district handles food service staff and costs on nontraditional instruction days.

(b) Other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.

(3) The department shall provide technical assistance, upon request, to districts prior to submission of the Nontraditional Instruction Program Renewal Application.

1 (4) A district shall submit an application at least one hundred and twenty (120) days prior to the
2 beginning of a school term to have the application considered for implementation at the
3 beginning of the upcoming school term.

4 (5) A committee designated by the Commissioner shall review and recommend the
5 Commissioner approve or deny a completed Nontraditional Instruction Program Renewal
6 Application within forty-five (45) days from receipt of the completed application.

7 (6) Within thirty (30) days from receipt of the recommendation from the committee designated
8 pursuant to subsection (5) of this section, the Commissioner shall approve or deny a completed
9 Nontraditional Instruction Program Renewal Application. At renewal, the Commissioner may
10 approve a district to participate in the nontraditional instruction program for up to four (4) years.

11 (7)(a) A district approved to participate in the nontraditional instruction program may amend its
12 Nontraditional Instruction Program Renewal Application as needed at any time by submitting a
13 written amendment request to the department.

14 (b) The amendment request shall contain a description of the amendment, proposed timeline for
15 implementation, and justification for the request.

16 (c) A committee designated pursuant to subsection (5) of this section shall review the amended
17 Nontraditional Instruction Program Renewal Application and recommend the Commissioner
18 approve or deny such within forty-five (45) days of the amendment submission.

19 (d) Within thirty (30) days from receipt of the recommendation from the committee designated
20 pursuant to subsection (4) of this section, the Commissioner shall approve or deny an amended
21 Nontraditional Instruction Program Renewal Application. An amended Nontraditional
22 Instruction Program Renewal Application approved by the Commissioner shall be in effect for
23 the remainder of the renewal period of approval pursuant to subsection (6) of this section.

Section 4. Use of Nontraditional Instruction Days. (1) Once the Commissioner has approved a district to participate in the nontraditional instruction program, the district may apply for and the Commissioner may approve the use of nontraditional instruction days on days when the district is closed for health or safety reasons.

(2) Pursuant to KRS 158.070, the district may apply for and the Commissioner may approve up to the equivalent of ten (10) student attendance days per school year in nontraditional instruction days for the district.

(3) The district shall seek approval from the Commissioner to use one or more nontraditional instruction days by submitting a request and appropriate supplemental documentation, as required by the department, to the department within thirty (30) days following the day(s) the district was closed for health or safety reasons.

(4) The Commissioner shall approve or deny a district's use of one or more nontraditional instruction days within thirty (30) days from receipt of the district's request and appropriate supplemental documentation, as required by the department. A request to use one or more nontraditional instruction days shall be denied by the Commissioner if the district fails to supply clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

1. Examples of student work;
2. Lesson plans; or
3. Curriculum maps.

Section 5. Monitoring and Revocation of Nontraditional Instruction Programs. (1) At the conclusion of the first school term of implementation of the approved Nontraditional Instruction Program Application and at the end of each school term thereafter for the entirety of the approval

status, a district approved by the Commissioner to participate in the nontraditional instruction program may receive an annual site visit from a review team selected and trained by the department. The purpose of the site visit is to monitor the district's progress in implementing the approved Nontraditional Instruction Program Application.

(2) If a site visit is conducted by the department, the site visit shall:

(a) Be made following adequate advanced notice to the district; and

(b) Include the gathering of information through the examination of records related to the district's implementation of the approved Nontraditional Instruction Program Application, including renewals and amendments if applicable, and through interviews with district leadership, staff, and students as well as other stakeholders.

(3) In addition to any site visit that may be conducted pursuant to subsections (1) and (2) of this section of this administrative regulation, a district approved by the Commissioner to participate in the nontraditional instruction program shall, upon request, make the following available for inspection by the department:

(a) Documentation of the instructional delivery methods used on nontraditional instruction days;

(b) Evidence demonstrating the district provides access on nontraditional instruction days to online resources, if used, and equitable instructional materials for students who do not have access to the internet and for students needing to access information differently;

(c) Clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

1. Examples of student work;

2. Lesson plans; or

3. Curriculum maps.

- 1 (d) Evidence demonstrating the district ensures implementation of Individual Education
2 Programs for students with disabilities, including the involvement Admissions and Release
3 Committee in planning for and making decisions related to the participation and needs of
4 students with disabilities, on nontraditional instruction days;
- 5 (e) Evidence demonstrating the district ensures implementation of other student-specific
6 educational plans, including Program Service Plans for English Learners and Gifted Student
7 Service Plans for students identified as gifted and talented, on nontraditional instruction days;
- 8 (f) Data demonstrating student participation and student learning on nontraditional instruction
9 days;
- 10 (g) Evidence demonstrating how each job category within the district fulfills contractual
11 obligations on nontraditional instruction days and data, including teacher work logs,
12 demonstrating employee participation on nontraditional instruction days;
- 13 (h) The professional learning plan implemented by the district to ensure certified staff have the
14 knowledge and capacity to provide instruction on nontraditional instruction days and evidence
15 demonstrating implementation;
- 16 (i) Where appropriate, agreements about nontraditional instruction days between the district and
17 educational agencies that are external to the district but have students of the district in attendance
18 on a part-time or full-time basis;
- 19 (j) Evidence demonstrating stakeholder involvement in developing and implementing
20 nontraditional instruction days;
- 21 (k) Methods used by the district to relay information about nontraditional instruction days to
22 students and families; and

(l) Other evidence deemed necessary by the department to effectively monitor the implementation of the approved Nontraditional Instruction Program Application, including renewals and amendments if applicable.

(4) At the conclusion of each term of implementation of the approved Nontraditional Instruction Program Application for the entirety of the approval status, the department may revoke approval of a district's nontraditional instruction program as a result of evidence collected pursuant to this section of this administrative regulation.

(5) Prior to having approval of its nontraditional instruction program revoked, a district shall receive a site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor the district's progress in implementing the nontraditional instruction program, collect qualitative data on the effectiveness of the nontraditional instruction program, and verify the district's compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through:

(a) Direct observation;

(b) Interviews with staff and students; or

(c) Examination of records.

(6) Any district that has had approval of its nontraditional instruction program revoked by the department shall wait a minimum of one (1) calendar year before submitting a new Nontraditional Instruction Program Application.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Nontraditional Instruction Program [~~Plan~~] Initial Application," October 2018; and

(b) "Nontraditional Instruction Program [~~Plan~~] Renewal Application," October 2018.

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

Wayne D. Lewis, Jr., Ph.D.
Interim Commissioner of Education

(Date)

Hal Heiner, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November ____, 2018, at _____ in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2018.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 701 KAR 5:150
Contact Person: Deanna Durrett, Deanna.durrett@education.ky.gov
Phone Number: 502-564-4474

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new regulation prescribes the conditions and procedures for local education agencies to be approved by the Commissioner of Education (Commissioner) for the nontraditional instruction program.

(b) The necessity of this administrative regulation: During the 2018 Regular Session of the Kentucky General Assembly, the legislature adopted Senate Bill 73, which became effective on July 14, 2018, revising KRS 158.070 to require the Kentucky Board of Education (KBE) to promulgate administrative regulations “to be effective with the 2019-2020 school year to prescribe the conditions and procedures for districts to be approved for the nontraditional instruction program.”

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the KBE in KRS 158.070, which specifically requires the KBE promulgate regulations to “to prescribe the conditions and procedures for districts to be approved for the nontraditional instruction program.”

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists local education agencies by providing a mechanism to submit nontraditional instruction programs to the Commissioner for approval.

(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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies, the KBE, and the Kentucky Department of Education (KDE) will be impacted by this regulation.

(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: A local education agency seeking initial approval for a nontraditional instruction program by the Commissioner will have to use the Nontraditional Instruction Program Initial Application and otherwise comply with the procedures in this administrative regulation. A local education agency seeking renewal of a nontraditional instruction program by the Commissioner will have to use the Nontraditional Instruction Program Renewal Application and otherwise comply with the procedures in this administrative regulation. A local education agency that has its nontraditional instruction program approved by the Commissioner will have to comply with the monitoring and oversight provisions of this administrative regulation. The KBE and KDE will implement the application procedures as well as the monitoring and oversight provisions in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to this administrative regulation for local education agencies, the KBE, or KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides for streamlined, efficient Nontraditional Instruction Program Initial Application and Nontraditional Instruction Program Renewal Application processes, which benefits local education agencies as well as the KBE and KDE. This administrative regulation also provides clarity and transparency regarding the processes the KBE and KDE will implement in monitoring and overseeing approved nontraditional instruction programs, which also benefits local education agencies as well as the KBE and KDE.

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

(a) Initially: A version of the nontraditional instruction program has existed since 2011, and KDE has been administering the program since that time. As a result, initial costs related to implementation of this administrative regulation are not anticipated.

(b) On a continuing basis: The administrative body incurs an ongoing cost of staff and resources in reviewing and approving nontraditional instruction programs and in monitoring approved nontraditional instruction programs. There are, though, no additional anticipated costs related to this administrative regulation for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of this administrative regulation; however, ongoing costs of staff and resources for the administrative body related to this administrative regulation and its enabling statutes are paid using 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: An

increase in fees or funding is not anticipated to be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied because this administrative regulation applies equally to local education agencies, the KBE, and the Kentucky Department of Education (KDE).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 701 KAR 5:150
Contact Person: Deanna Durrett, Deanna.durrett@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, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (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, KRS 156.070, KRS 156.160, and KRS 158.070.

(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. A version of the nontraditional instruction program has existed since 2011, and KDE has been administering the program since that time. As a result, this administrative regulation is not expected to impact the expenditures and revenues of any state or local government agency.

(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? N/A

(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? N/A

(c) How much will it cost to administer this program for the first year? A version of the nontraditional instruction program has existed since 2011, and KDE has been administering the program since that time. As a result, additional costs related to administering this program for the first year are not anticipated.

(d) How much will it cost to administer this program for subsequent years? A version of the nontraditional instruction program has existed since 2011, and there is an ongoing cost of staff and resources in reviewing and approving nontraditional instruction programs and in monitoring approved nontraditional instruction programs. There are, though, no additional anticipated costs related to this administrative regulation.

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

701 KAR 5:150. Nontraditional instruction program.

The following documents are incorporated by reference:

- (1) “Nontraditional Instruction Program Initial Application,” October 2018. The document incorporated by reference consists of four (4) pages. This document is the form local education agencies use to submit nontraditional instruction programs to the Kentucky Board of Education for initial approval.
- (2) “Nontraditional Instruction Program Renewal Application,” October 2018. The document incorporated by reference consists of two (2) pages. This document is the form local education agencies use to submit nontraditional instruction programs to the Kentucky Board of Education for renewal.