

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Not Amended After Comments)

5 703 KAR 5:240. Accountability administrative procedures and guidelines.

6 RELATES TO: KRS 158.6451, 158.6453, 158.6455

7 STATUTORY AUTHORITY: KRS 158.6453, 158.6455

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(3)(a) and KRS

9 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative

10 regulations to create and implement a balanced statewide assessment and accountability program

11 that measures the achievement of students, schools, and districts; complies with the federal

12 Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., [~~No Child Left Behind Act of~~

13 ~~2001, 20 U.S.C. secs. 6301 et seq.~~], or its successor; and ensures accountability. This

14 administrative regulation establishes administrative procedures and guidelines for Kentucky's

15 assessment and accountability program.

16 Section 1. Definitions. (1) "A1" means a school that:

17 (a) Is under administrative control of a principal and eligible to establish a school-based

18 decision-making council; and

19 (b) Is not an alternative education program operated by, or as a part of, another school.

20 (2) "Alternative education program" is defined by KRS 160.380(1)(a).

1 (3) "Full Academic Year" means 100 or more instructional days of enrollment within the school
2 year.

3 Section 2. Assigning Students for School and District Accountability. (1)(a) A student enrolled
4 in an A1 school for a full academic year shall be counted in the accountability membership of the
5 A1 school and shall be attributed to the A1 school for accountability purposes. This shall include
6 state agency children or other students who have been enrolled in an A1 school by any authority.

7 (b) A student qualifying as an early graduate based on criteria defined in 704 KAR 3:305 shall be
8 included in the school's accountability calculation in the year in which the student graduates
9 whether or not the student has a full academic year of enrollment.

10 (2) A student enrolled in an A1 school and attending an alternative education program during the
11 year as a result of local school district policies or procedures shall be counted in the
12 accountability membership of the A1 school and shall be attributed to the A1 school for
13 accountability purposes if the student's combined enrollment in the A1 school and alternative
14 education program is a full academic year.

15 (3) A student enrolled in an alternative education program for a full academic year as a result of
16 local school district policies or procedures without any enrollment in an A1 school during the
17 same year shall be attributed to the accountability of the district that the student would have
18 attended if not enrolled in the alternative education program.

19 (4) A student not enrolled in any A1 school or an alternative education program for a full
20 academic year, but enrolled in a district for a full academic year, shall be assigned to the district
21 for accountability purposes.

1 (5) The Department of Education shall monitor alternative school placements. If evidence
2 indicates a district is inappropriately placing students into alternative programs to avoid inclusion
3 in accountability, it shall be further investigated by the Department of Education.

4 Section 3. Assigning Students for State Accountability. (1) Students enrolled in alternative
5 education programs, and not attributed to an A1 school or district, shall be aggregated into a state
6 level accountability report.

7 (2) If a student, before completing a full academic year in a school or district as provided in
8 Section 2 of this administrative regulation, is enrolled in an alternative education program by a
9 court, a governmental agency other than a Kentucky public school, or Kentucky school district,
10 the student shall be accountable to the state.

11 Section 4. Inclusion of Schools in Accountability. (1) All A1 schools shall receive annual
12 accountability classifications as established in 703 KAR 5:270 [~~703 KAR 5:200, Section~~
13 ~~4(6)(b)~~], for the state’s assessment and accountability system [~~and shall receive recognition or~~
14 ~~support as provided by 703 KAR 5:225~~].

15 (2)(a) For reporting purposes, all alternative education programs shall receive annual
16 accountability reports based on tested students.

17 (b) Reports for alternative education programs shall be separate from the A1 school
18 accountability reporting.

19 (c) The alternative education program reports shall outline the unique features and characteristics
20 of the alternative education program and the appropriate uses and limitations of the data.

21 [~~(d) State support and recognition as provided in 703 KAR 5:225 may apply to an alternative~~
22 ~~education program at the discretion of the Commissioner of Education if resources are available.~~]

1 Section 5. Standard Grade Configuration for Accountability. (1) Accountable grade level
2 configurations shall be elementary, middle, or high school.
3 (a) Elementary shall include any configuration of grades K-5 or K-6.
4 (b) Middle school shall include any configuration of grades 5-8 or 6-8.
5 (c) High school shall include any configuration of grades 9-12.
6 (2) An A1 school or an alternative education program shall fall into one (1), two (2), or three (3)
7 grade level configurations for accountability reporting.

8 Section 6. Reporting of Schools with Changed School Service Area. (1)(a) For reporting
9 purposes, a school's past data trend shall be removed from public reporting if a school has a
10 significant change in its stable population.

11 (b) A school shall be considered to have a stable population, if as a result of a change in service
12 area boundaries or local board of education policies affecting student population served by a
13 school, the population of the school remains at sixty (60) percent or higher of its original
14 students from the previous year in the accountability grades.

15 (c) To determine if the population is stable, the number of students in the stable population shall
16 be divided by the total number of students in the grades included in the accountability
17 calculations.

18 1. If the stable population is sixty (60) percent or higher, the school's past trend data shall be
19 reported.

20 2. If the stable population is less than sixty (60) percent, the school's past trend data shall not be
21 reported.

22 (2) A school district shall notify the Department of Education of any school that will have [~~has~~]
23 an unstable population compared to the prior year[s] by June 30 [~~October 1~~].

1 Section 7. Data Review and School or District Appeal of Accountability Classifications. (1) A
2 written request for a data review shall be submitted to the Department of Education within ten
3 (10) days after the Department of Education officially releases the final accountability
4 classifications as established in 703 KAR 5:270 [~~703 KAR 5:200, Section 4(6)(b)~~], to the public.

5 (2) A written appeal of a final accountability classification shall be submitted to the
6 Commissioner of Education within forty-five (45) days after the Department of Education
7 officially releases the accountability classifications. The appeal of a final classification shall:

8 (a) Identify clearly the basis for the wrongful effect on the calculations used to place a school
9 into a classification; and

10 (b) Detail the requested adjustment to be made to the calculations used to place a school into a
11 classification.

12 (3)(a) The request for an appeal for a school accountability classification shall be signed by the
13 principal upon approval of the school council. If there is no school council, the request shall also
14 be signed by the superintendent, upon approval of the local board of education.

15 (b) The request for an appeal for a district accountability classification shall be signed by the
16 superintendent upon approval of the local board of education.

17 (4)(a) Department of Education staff shall review the request for an appeal against the standards
18 set forth in KRS 158.6455 (6)[~~(8)~~].

19 (b) A committee shall be appointed by the Commissioner of Education to review the pending
20 appeals and make recommendations to the Commissioner of Education as to whether to dispute
21 an appeal. The committee may include a teacher, a parent, a principal, a district assessment
22 coordinator, a superintendent, and a counselor.

1 (c) If the appeal is disputed by the department, it shall submit the request to the hearing officer
2 for the Kentucky Board of Education.

3 (5) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The
4 hearing officer shall submit a written recommended order to the Kentucky Board of Education
5 for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

6 Section 8. Student Participation in State Assessments. (1)(a) All students enrolled shall
7 participate at the appropriate grade level for the state-required assessments in grades 3-12 [~~8, the~~
8 ~~college readiness tests, and the writing on demand tests~~].

9 (b) For assessment and accountability purposes, the state shall not use the primary level
10 designator and all students in grades 3-12 shall be assigned a single grade level. The assigned
11 grade level shall determine the state tests to administer.

12 (c) Exceptions for testing shall be made for medical-exempted students or extraordinary
13 circumstances [~~and foreign exchange students~~].

14 (d) Students categorized as English Learners (EL) shall follow testing guidelines set forth by the
15 federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq. [~~No Child Left Behind~~
16 ~~Act of 2001, 20 U.S.C. secs. 6301 et seq.~~], or its successor.

17 [~~(2) High school students shall participate in the state-required end-of course testing program~~
18 ~~after completing the appropriate course linked to the end-of course test.~~]

19 (2) [~~(3)~~] For the state assessments in grades 3-12 [~~8, the college readiness tests, and the writing~~
20 ~~on demand tests~~], a school shall test all students during the test window that are enrolled in each
21 accountability grade on the first day of the school's testing window and shall complete a roster in
22 the electronic application provided by the Department of Education.

1 ~~[(4) For the end of course examination, the school shall test all students enrolled at the~~
2 ~~completion of the course associated with the state required end of course examination and shall~~
3 ~~complete a roster in the electronic application provided by the Department of Education.]~~

4 (3) ~~[(5)]~~ A student retained in a grade in which state-required assessments are administered shall
5 participate in the assessments for that grade again and shall continue to be included in all
6 accountability calculations. ~~[A high school student who re-takes a course attached to an end-of~~
7 ~~course examination shall take the end-of-course examination at the end of the appropriate~~
8 ~~coursework.]~~

9 (4) ~~[(6)]~~ A student who is suspended or expelled but continues to receive instructional services
10 required under KRS 158.150 shall participate in the state-required assessments.

11 Section 9. Students Not Participating in State-Required Assessments. (1) If a student does not
12 participate in state-required assessments, the school at which the student was enrolled on the first
13 day of the testing window shall include the student in the roster in the electronic application
14 provided by the Department of Education.

15 (2) A student who does not take the state assessments and does not qualify for approved
16 exempted status shall be assigned the lowest reportable score on the appropriate test for
17 accountability calculations.

18 (3) A student reaching the age of twenty-one (21) years of age who no longer generates state
19 funding under Support Education Excellence in Kentucky shall not be required to participate in
20 state-required assessments.

21 (4) A student who is expelled and legally not provided instructional services under the standards
22 established in KRS 158.150 shall not be considered to be enrolled for a full academic year, and
23 shall not be included in accountability calculations.

1 (5) If a student has been expelled or suspended at some point during a year and is enrolled but
2 does not complete the state-required assessment, the student shall be included in the
3 accountability calculation.

4 (6)(a) If participation in the state-required assessment would jeopardize a student's physical,
5 mental, or emotional well-being, a school or district shall submit a request for medical
6 exemption, which shall be subject to the approval of the Department of Education and which
7 describes the medical condition that warrants exempting a student from the assessments.

8 (b) An identified disability or handicapping condition alone shall not be considered sufficient
9 reason for granting a medical exemption to state-required assessment and accountability
10 requirements.

11 (c) A student with an approved medical exemption or extraordinary circumstance shall be
12 excluded from state-required assessments and state and federal accountability calculations.

13 [~~7) A foreign exchange student may be assessed with state required assessments, but the foreign~~
14 ~~exchange student scores shall not be included in the accountability calculations.]~~

15 7) [(8)] If the student moves out of state or to a private school before state-required assessments
16 can be completed in the school or district's announced testing window, the student shall be
17 excluded from accountability calculations.

18 Section 10. Required Participation in the National Assessment of Educational Progress (NAEP)
19 and State-Required Field Testing. (1) If a school is selected by the U.S. Department of Education
20 or its designated contractors to participate in NAEP testing, the school shall participate fully.

21 (2) If a school is selected by the Department of Education to participate in field testing for state
22 assessment purposes, the school shall participate fully. [~~38 Ky.R. 1407; 39 Ky.R. 32; eff. 7-13-~~
23 ~~2012; 41 Ky.R. 2042; eff. 6-8-2015.)]~~

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
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 October 21, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, 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 until October 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 703 KAR 5:240
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 administrative regulation establishes administrative procedures and guidelines for Kentucky's assessment and accountability program.

(b) The necessity of this administrative regulation: KRS 158.6453(3)(a) and KRS 158.6455(2)(a) require the Kentucky Board of Education to promulgate administrative regulations to create and implement a balanced statewide assessment and accountability program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq, or its successor; and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides administrative procedures and guidelines for the state assessment and accountability system for Kentucky public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and guidance to ensure consistent implementation of the state assessment and accountability system.

(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: With the new accountability regulation, 703 KAR 5:270, in effect, it is important to amend this regulation so they both align. It also is important to align the regulation to both state and federal requirements. A few issues of miss-alignment within the regulation are: the regulation references 703 KAR 5:200, Next generation learners, which is the old accountability regulation that has been recently repealed; the regulation references 703 KAR 5:225, Continuous improvement planning for schools and districts, which has been amended and no longer applies to this regulation; Kentucky no longer uses End-of-Course (EOC) assessments in high school for accountability, Kentucky moved to an End-of-Span assessment that is administered at grade 10 (reading and mathematics) and grade 11 (science, social studies and writing); and, the regulation includes medical exemptions, but does not include extraordinary circumstances for students to be exempted from testing.

Additionally, the regulation currently states that foreign exchange students may be assessed with state required assessments, but the foreign exchange students shall not be included in the accountability calculations. During the review of Kentucky's initial consolidated State plan in 2018, the United States Department of Education informed Kentucky that its policy for foreign exchange students must be modified. All foreign exchange students who have been enrolled for a full academic year (i.e. 100 days of enrollment) shall be tested and included in accountability.

(b) The necessity of the amendment to this administrative regulation: The amendment provides specific improvements to procedures and guidelines for the state assessment and accountability program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability as required by KRS 158.6453 and KRS 158.6455.

(c) How the amendment conforms to the content of the authorizing statute: This amendment provides specific details and guidance regarding implementation of the state assessment and accountability system in Kentucky public schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific procedures and guidance to ensure consistent implementation of accountability in Kentucky schools and districts.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(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: The amendment will impact schools and districts and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of accountability by schools and districts as required by KRS 158.6453.

(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: The Kentucky Department of Education, schools and districts shall apply consistently the specific procedures and guidance in the state assessment and accountability system. Minimal action required by schools and districts as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the schools, districts or the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and districts will consistently apply procedures and guidance in the assessment and accountability system.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. State and federal funds to the extent any additional costs are incurred.

(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: No increase will be necessary.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 703 KAR 5:240
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? School districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453; KRS 158.6455

(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) 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? None.

(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? None.

(c) How much will it cost to administer this program for the first year? Amendment adds no additional costs.

(d) How much will it cost to administer this program for subsequent years? Amendment adds no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Regulation does not generate revenue or establish fees.

STATEMENT OF CONSIDERATION
Relating to 703 KAR 5:240
Accountability Administrative Procedures and Guidelines

Kentucky Board of Education
Department of Education

Not Amended After Comments

I. A public hearing was held on the above regulation on October 21, 2019 at 10:00 a.m. Eastern Time at 300 Sower Boulevard, Frankfort, Kentucky.

II. The following individuals attended this public hearing or submitted written or verbal comments:

| <u>Name</u> | <u>Title and Affiliation</u> |
|-----------------|---------------------------------|
| James Barrett | Educator, Owsley County Schools |
| Tanya Begley | Educator, Owsley County Schools |
| Tim Bobrowski | Educator, Owsley County Schools |
| Tina Bobrowski | Educator, Owsley County Schools |
| Amanda Brown | Educator, Owsley County Schools |
| Brett Burns | Educator, Owsley County Schools |
| Thomas Burns | Educator, Owsley County Schools |
| Tammy Clifton | Educator, Owsley County Schools |
| Heather Cornett | Educator, Owsley County Schools |
| Eugena Gabbard | Educator, Owsley County Schools |
| Tonya Gibson | Educator, Owsley County Schools |
| Dianna Gilbert | Educator, Owsley County Schools |
| Steve Grove | Educator, Owsley County Schools |
| Jennifer Hall | Educator, Owsley County Schools |
| Sylvia Havicus | Educator, Owsley County Schools |
| Rachel Hisel | Educator, Owsley County Schools |
| Vanessa Johnson | Educator, Owsley County Schools |
| Jed Lewis | Educator, Owsley County Schools |
| Kim Little | Educator, Owsley County Schools |
| Noah Noble | Educator, Owsley County Schools |
| Stevi Nolan | Educator, Owsley County Schools |
| Tyler Roberts | Educator, Owsley County Schools |
| Pam Sandlin | Educator, Owsley County Schools |

Robert Smith
Brent Turner

Educator, Owsley County Schools
Educator, Owsley County Schools

III. The following people from the promulgating administrative body attended the public hearing and/or responded to written comments:

Name and Title

Rhonda Sims, Associate Commissioner, Office of Standards, Assessment and Accountability

Todd Allen, Deputy General Counsel, Office of Legal Services

Michael Hackworth, Policy Advisor, Office of Standards, Assessment and Accountability

Jennifer Stafford, Division Director, Division of Assessment and Accountability Support

John Landon, Staff Attorney, Office of Legal Services

IV. Summary of Comments and Responses

(1) Subject Matter: Assigning Students for School and District Accountability

(a) Comments: Many commenters believe that the regulation should be amended to reflect 100 days of enrollment at the A1 school before a student from a non-A1 school is held accountable to the A1 schools. Commenters expressed concern that it is unfair to small districts to hold schools accountable for the students who they haven't taught for 100 days.

In addition, a commenter asked on whether it has been considered to award quarter or half stars in the rating system.

Individuals speaking or offering written comments or concerns on this subject matter include: James Barrett, Tanya Begley, Tim Bobrowski, Tina Bobrowski, Amanda Brown, Brett Burns, Thomas Burns, Tammy Clifton, Heather Cornett, Eugena Gabbard, Tonya Gibson, Diana Gilbert, Steve Grove, Jennifer Hall, Sylvia Havicus, Rachel Hisel, Vanessa Johnson, Jed Lewis, Kim Little, Noah Noble, Stevi Nolan, Tyler Roberts, Pam Sandlin, Robert Smith and Brent Turner.

(b) Response: The agency carefully reviewed and considered all comments.

As stated in KRS 158.6453, the Kentucky Board of Education shall be responsible for creating and implementing a balanced statewide assessment program that measures the students', schools', and districts' achievement of the goals set forth in KRS 158.645 and 158.6451, to ensure compliance with the Every Student Succeeds Act of 2015, Pub. L. No. 114-95, or its successor, and to ensure accountability.

Without the requirements set forth in Section 2 of 703 KAR 5:240, many students enrolled in non-A1 programs would not be included in the accountability system. Inclusion of all students in the state's school accountability system is an equity issue. Individual students or groups of students not included may not receive supports or proper interventions critical for success.

Educators make important decisions on student placement. School leaders place students in a range of settings that provide the best learning environment for each student. It is incumbent for the school and district to make appropriate placements for the students.

The staff in the Office of Standards, Assessment and Accountability at the Kentucky Department of Education (KDE) understand the impact an individual student can have in the accountability calculations for schools and districts, particularly those with smaller populations. To ensure that accountability calculations and student rosters are correct, it is extremely important that districts and schools participate in the data review windows that KDE offers throughout the year. If there are any discrepancies during those windows, tickets shall be created by the district for KDE staff to investigate. If there are any errors, KDE will correct so that accountability will be correct.

After careful consideration, the agency declines to amend the regulation regarding the requirements set forth in assigning students for school and district accountability.

The star rating system is not under purview of this administrative regulation.

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

The public hearing on this administrative regulation was held October 21, 2019 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky and written comments were received. The agency responded to the comments and will not amend the administrative regulation.