

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 780 KAR 2:060. Discipline of students.

6 RELATES TO: KRS 156.802(3) [~~151B.025(3)~~], 158.150, KRS 158.444

7 STATUTORY AUTHORITY: KRS 156.802(3) [~~151B.025(3)~~], 156.852 [~~151B.150~~]

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802(3) [~~151B.025(3)~~] gives the

9 Kentucky Department of Education [~~Office of Career and Technical Education~~] the

10 responsibility for all administrative functions of the state in relation to the management, control,

11 and operation of state-operated secondary area technology centers. KRS 156.852 [~~151B.150~~]

12 authorizes the Kentucky Board of Education [~~Executive Director of the office~~] to promulgate

13 administrative regulations to implement career and technical education in Kentucky. KRS

14 158.150 establishes the grounds and procedures for discipline from the state's common schools.

15 This administrative regulation establishes the procedure for the suspension and expulsion of

16 students from Kentucky TECH schools for disciplinary reasons following the grounds and

17 procedures established in KRS 158.150 for the common schools.

18 Section 1. Definition. "Kentucky TECH" means the system of state-operated secondary career

19 and technical education programs in the area technology centers.

1 Section 2. Teachers and administrators employed in or assigned to work in a Kentucky TECH
2 school shall be responsible for the supervision and discipline of students during the time the
3 students are in attendance at a state-operated career and ~~[vocational-]~~ technical facility.

4 Section 3. All students shall comply with the policies of the Kentucky TECH school in which
5 they are enrolled. The following actions, **subject to due process requirements set forth in**
6 **KAR Title 707**, shall constitute ~~[be]~~ cause for disciplinary suspension or expulsion:

- 7 (1) Willful disobedience or defiance of the authority of a teacher or administrator;
- 8 (2) Assault, battery or abuse of another student or school personnel;
- 9 (3) Threat of force or violence;
- 10 (4) Use or possession of illicit drugs or alcohol;
- 11 (5) Stealing, destroying or defacing school or personal property;
- 12 (6) Possessing or using a dangerous weapon or instrument; or
- 13 (7) Other incorrigible bad conduct on school property or at school-sponsored activities.

14 Section 4. (1) Except as provided in subsection (2) of this section, any secondary student subject
15 to disciplinary action shall be referred by the school administrator of a Kentucky TECH school
16 to the principal of the sending ~~[parent]~~ school in which the student is enrolled, where pursuant to
17 KRS 158.444, the incident must be recorded within the student information system.

18 (2) The Kentucky TECH school administrator or his/her designee shall have the authority to
19 immediately suspend secondary students from the area technology center ~~[for a maximum of~~
20 ~~three (3) days,]~~ without action by the sending ~~[parent]~~ school, to:

- 21 (a) Protect persons or property; or
- 22 (b) Avoid disruption of the ongoing academic programs.

1 (3) The Kentucky TECH school administrator shall submit in writing to the principal of the
2 sending [parent] high school the reason for disciplinary action and recommend any further
3 action.

4 (4) The principal of the sending [parent] high school shall respond to the Kentucky TECH school
5 administrator as to the action to be taken.

6 (5) The due process procedures outlined in KRS 158.150(5) shall follow the suspension as soon as
7 practicable, but no later than three (3) school days after the suspension.

8 Section 5. A secondary student who is suspended [~~or expelled~~] from a participating local high
9 school or expelled from a participating local school district shall be suspended or expelled from
10 the Kentucky TECH school in which the student is enrolled.

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)

Kevin C. Brown
Interim Commissioner of Education

(Date)

David Karem, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 23, 2019, at 10:00 a.m. ET 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. 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 December 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: Todd Allen, Interim 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: 780 KAR 2:060
Contact Person: Todd Allen, Todd.Allen@education.ky.gov
Phone number: 502-564-4474

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the suspension and expulsion of students from Kentucky TECH schools (also known as ATCs) for disciplinary reasons following the grounds and procedures established in KRS 158.150 and ensures compliance with discipline data reporting requirements outlined in KRS 158.444.

(b) The necessity of this administrative regulation: KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions of the state in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation establishes the procedures for the suspension and expulsion of students from a Kentucky TECH school. Because the Kentucky TECH system of ATCs is governed by the KDE, such regulations are necessary to ensure proper management, control and operation of these centers. Additionally, pursuant to KRS 156.852, the Kentucky Board of Education (KBE) is vested with the authority to carry out the purposes of career and technical education programs and is given all necessary power and authority in promulgating administrative regulations and carrying out the provisions of the acts relating thereto.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures proper action is taken when a student is suspended from an ATC for disciplinary reasons.

(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: Amendments to this regulation provide clarity to the procedures for suspension, bring its contents up-to-date with current statutory references, inserts gender neutral language, ensures compliance with due process procedures for the student being suspended and it requires the sending high school to record the behavior/discipline even within the student information system, pursuant to KRS 158.444.

(b) The necessity of the amendment to this administrative regulation: Amendments to the regulation are aimed at providing greater clarity to the roles and responsibilities of the ATC personnel, as well as the student's sending high school, when a student suspension occurs.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative

functions of the state in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(d) How the amendment will assist in the effective administration of the statutes: Pursuant to KRS 156.852, the Kentucky Board of Education (KBE) is vested with the authority to carry out the purposes of career and technical education programs and is given all necessary power and authority in promulgating administrative regulations and carrying out the provisions of the acts relating thereto. Such requirements are necessary in order to carry out the work of the ATCs.

(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: ATCs and school districts.

(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 amendments will impact ATCs and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of the suspension protocols within the 53 state-operated schools.

(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: ATCs will be required to implement the procedures outlined in the administrative regulation when suspending a student from the ATC. School districts will be required to report the behavior incident within the student information database system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost involved in complying with this administrative regulation and its new amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments will increase the efficiency among the ATCs and ensure consistent protocols, and that accurate documentation and data is being collected in relation to student suspensions from these state-operated schools.

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

(a) Initially: Minimal staff time at the Kentucky Department of Education will be required to implement this regulation.

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this regulation.

(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: N/A

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 780 KAR 2:060
Contact Person: Todd Allen, Todd.Allen@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? Area Technology Centers (ATCs) and the Kentucky Department of Education

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions of the state in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(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. This regulation does not create revenue or expenditures for the entities involved.

(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? Minimal staff time at the Kentucky Department of Education will be required to implement the regulation.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required to implement the regulation in subsequent years.

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 (+/-): N/A

Other Explanation: N/A

STATEMENT OF CONSIDERATION
Relating to 780 KAR 2:060
Discipline of Students

Kentucky Board of Education
Department of Education

Amended After Comments

I. A public hearing was scheduled for the above regulation on December 23, 2019 at 10:00 a.m. Eastern Time at the Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky, but was cancelled because no one registered to attend.

II. The following individuals submitted written or verbal comments:

<u>Name</u>	<u>Title and Affiliation</u>
Whitney Hayse	Staff Attorney, Kentucky Protection and Advocacy

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

<u>Name and Title</u>
David Horseman Associate Commissioner, Office of Career and Technical Education and Student Transition

Ashley Lant
Assistant General Counsel, Office of Legal Services

Leslie Slaughter
Executive Advisor, Office of Career and Technical Education and Student Transition

Tom Thompson
Division Director, Office of Career and Technical Education and Student Transition, Division of Technical Schools and Continuous Improvement

IV. Summary of Comments and Responses

(1) Subject Matter: Proposed Amendment to Ensure Compliance with Federal Law in the Discipline of Students with Disabilities

(a) Comment: The commenter suggested a clarifying amendment within Section 3 of the proposed regulation, which was as follows (bolded and underlined):

Section 3. All students shall comply with the policies of the Kentucky TECH school in which they are enrolled. The following actions, **subject to due process requirements set**

forth under federal special education law, shall ~~constitute~~^{be} cause for disciplinary suspension or expulsion: (1) Willful disobedience or defiance of the authority of a teacher or administrator; (2) Assault, battery or abuse of another student or school personnel; (3) Threat of force or violence; (4) Use or possession of illicit drugs or alcohol; (5) Stealing, destroying or defacing school or personal property; (6) Possessing or using a dangerous weapon or instrument; or (7) Other incorrigible bad conduct on school property or at school-sponsored activities.

The commenter proposes that the insertion of this amendment would provide clarity concerning the requirements of the Individuals with Disabilities Education Act (IDEA) federal law and the guarantee that high school students with disabilities are afforded a Free and Appropriate Public Education (FAPE) tailored to their individual needs and sufficient to prepare them for their future. The commenter highlights that IDEA mandates due process to ensure students receive a FAPE, including requirements related to disciplinary actions; thus, the commenter believes that the additional language helps ensure such rights within the Kentucky TECH school context.

- (b) Response: The agency carefully reviewed this comment and agrees that the proposed amendment provides clarity concerning requirements under IDEA. However, rather than broadly citing “federal special education law,” the agency agrees to cite KAR Title 707. The agency agrees to revise the proposed regulation to include such amendment as outlined herein.

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

The public hearing on this administrative regulation was scheduled for December 23, 2019 at 10:00 a.m., in the State Board Room, Fifth Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky, but was later cancelled due to no notice of anticipated attendees. One written comment was received. The agency responded to the written comments received and amends the administrative regulation as follows:

Page 2

Section 2

Line 5

After “actions” insert “, **subject to due process requirements set forth in KAR Title 707,**”.