

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amendment)

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95 and ensures accountability. KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs", April 2021 [~~December 2016~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the

Department of Education, Office of Assessment and Accountability, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (25 Ky.R. 2731; 26 Ky.R. 1001; eff. 10-11-1999; 29 Ky.R. 806; eff. 11-12-2002; 30 Ky.R. 1841; 2065; 2301; eff. 4-17-2004; 35 Ky.R. 637; 1220; 2051; eff. 2-12-2009; 40 Ky.R. 1437; 2185; eff. 5-2-2014; 43 Ky.R. 1264; eff. 3-31-2017.)

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)

Jason E. Glass, Ed.D.
Commissioner of Education

(Date)

Lu Young, Ed.D.
Kentucky Board of Education Chairperson

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on **XXXXXX**, at **XXXX** 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 **XXXXXX**. 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, 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 5:070
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: 703 KAR 5:070, which incorporates by reference “Inclusion of Special Populations in the State-Required Assessment and Accountability Programs,” April 2021, establishes procedures for the inclusion of special populations of students in the state-required assessment and accountability system that classifies schools and districts.

(b) The necessity of this administrative regulation: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. In addition, KRS 158.6453 requires the Kentucky Board of Education to create and implement a statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95 and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for implementation of the statewide assessment and accountability system. The regulation provides procedures for inclusion of special populations in the requirements of KRS 158.6453, KRS 158.6455 and the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the inclusion of student special populations in the state-required assessment and accountability programs. The regulation defines accommodations permitted with state-required testing for students with education plans (i.e., Individual Education Program (IEP), 504 Plan and Program Services Plan for English learners) and for students enrolled in particular programs (i.e., alternative programs, state agency, home/hospital settings); and for students participating in the alternate assessment program.

(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: The amendments throughout the regulation make language more concise by adding new language or by removing outdated or confusing language. In addition, language has been updated to align with direction and guidance received by the U.S. Department of Education and recent audit findings.

In an effort to reduce audit findings, Section Two – Inclusion of Students As English Learners (EL) was amended to clarify frequently mis-understood requirements. This includes amendments to clarify processes for the identification and planning processes for English Learners. The

amendments re-organize section two, create a definition for the Program Service Plan (PSP), specify the membership of a PSP committee, and create a requirement for schools to administer a KDE created Home Language Survey. Section two also makes minor language changes to align the regulation to the ESSA, including the inclusion of a opt out requirements for parents of EL students and monitoring requirements. Amendments to section 2 also includes removal of language that Kindergarten students cannot exit EL status, which is a result from a recent audit finding.

(b) The necessity of the amendment to this administrative regulation: These amendments provide 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: These amendments provide 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: These amendments provide 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 amendments 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 5:070
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? 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.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

703 KAR 5:070, Inclusion of Special Populations in the State-Required Assessment and Accountability Programs

The following document is incorporated by reference:

(1) "The Inclusion of Special Populations in the State-Required Assessment and Accountability Programs", April 2021, is incorporated by reference. The document consist of 28 pages and contains the procedures for the inclusion of special populations of students in the state-required assessment and accountability system that classifies schools and districts.