

STATEMENT OF CONSIDERATION
RELATING TO 702 KAR 7:150

Kentucky Board of Education, Department of Education
(Amended After Comments)

I. A public hearing was scheduled for the above regulation on August 30, 2021 at 10:00 a.m. Eastern Time at the Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Frankfort, Kentucky, but was cancelled because no one registered to attend. However, a written comment was received during the public comment period.

II. The following individual submitted written comments:

<u>Name</u>	<u>Title and Affiliation</u>
Teresa Combs	Of-Counsel, Fowler Bell, PLLC

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

Name and Title

Matt Ross, Executive Advisor, Office of Finance and Operations
David Wickersham, Executive Advisor, Office of Special Education and Early Learning
Ashley Lant, Deputy General Counsel, Office of Legal Services
Lindsey Swartz, Staff Attorney, Office of Legal Services

IV. Summary of Comments and Responses

(1) Subject Matter: Discrimination concern related to students who require home or hospital (H/H) instruction due to a disabling condition that may be excluded from participation in extracurricular activities.

(a) Comment: The commenter believes that Section 2(4) of the regulation could be discriminatory if a student has a disabling condition which is the reason for H/H instruction. The commenter noted that the new provision could keep a student from attending prom or a club meeting. The commenter highlighted that she is aware of OCR guidance that indicates that prohibiting students from participating in all extracurricular activities could be discrimination if the student has a disabling condition that is the reason for the H/H instruction.

(b) Response: The agency carefully reviewed this comment and is amending Section 2(4) to clarify that the provision prohibiting home or hospital students from participating in sports, extracurricular activities or working does not apply to a student covered by Section 504 of the Rehabilitation Act of 1973 if the participation in work, sports, or extracurricular activities is consistent with the student's 504 plan.

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

The public hearing on this administrative regulation was scheduled for August 30, 2021 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 comment and amends the administrative regulation as follows:

Page 3
Section 2(4)
Line 4

After "(4)," insert the following:

Except as provided by subsection (5) of this section, e

Delete "E" and ",".

Page 3
Section 2(4)
Line 5

After "Committee" delete ",".

Page 3
Section 2(4)
Line 5

After "activities." insert the following subsection:

(5) For students with a 504 plan pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, eligibility for home or hospital instruction shall not cease if the student works, plays sports or participates in extracurricular activities if participation in work, sports or extracurricular activities is consistent with the student's 504 plan.