

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Waiver of 702 KAR 7:125, Pupil Attendance

**Date:** April 2022

**Action Requested:**  Review  Action/Consent  Action/Discussion

**Held In:**  Full Board  Curriculum, Instruction and Assessment  Operations

### SUMMARY OF ISSUE BEFORE THE BOARD:

To take action on the continuation of the 2021 KBE approved waiver of 702 KAR 7:125, *Pupil attendance*, in order to provide necessary flexibility for districts seeking to provide full-time online, virtual, and remote learning enrollment options during the 2022-2023 school year. The 2021-2022 pupil attendance waiver was previously approved at the May 18, 2021 Kentucky Board of Education Special Video Teleconference Meeting.

### COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends continuation of the waiver process of 702 KAR 7:125, Pupil attendance, in order to provide necessary flexibility for districts seeking to provide full-time online, virtual, and remote learning enrollment options during the 2022-2023 school year.

The Commissioner also recommends the Kentucky Board of Education (KBE) prospectively approve any future waiver of 702 KAR 7:125, *Pupil attendance*, requested by application to the Commissioner from a Superintendent, acting at the direction of the local board of education, for the expressed purpose of providing necessary flexibility for a district seeking to provide full-time online, virtual, and remote learning enrollment options during the 2022-2023 school year.

### APPLICABLE STATUTE OR REGULATION:

KRS 156.160, 702 KAR 7:125

### BACKGROUND:

*Existing Policy:*

KRS 156.160(2)(a) states: "At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver."

702 KAR 7:125, *Pupil attendance*, contains language that permits Kentucky public school districts to provide performance-based virtual learning opportunities to students enrolled in middle and high school grades. Specifically, Section 1(4) of 702 KAR 7:125 states:

*Pupils shall be physically present in the school to be counted in attendance except under the following conditions:*

- (a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;*
- (b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;*
- (c) The pupil is participating in an off-site virtual high school class or block. A pupil may*

***be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if he pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7;***

Prior to the COVID-19 related school closures during the 2020-21 school year, approximately 84 percent of Kentucky school districts provided some level of performance-based online, virtual, and remote learning using the provisions of 701 KAR 7:125. Those programs ranged from credit accumulation, credit acceleration and credit recovery efforts to entire schools. One such school is the BAVEL Academy in Barren County, which has part-time and full-time students enrolled from across the Commonwealth and the nation. All existing online, virtual, and remote learning programs limit student enrollment to students in grades 5 – 12 as outlined in 704 KAR 3:305, *Minimum requirements for high school graduation*.

In March 2020, due to the declaration of a national and state health emergency, all Kentucky schools were closed by the Governor and were all required to transition to fully remote learning model. The Governor’s Executive Orders and KBE Emergency Regulations were enacted to provide necessary flexibilities for the remainder of the 2019-2020 school year and the first half of the 2020-2021 school year.

As a result, districts have developed high quality K-12 online, virtual, and remote learning programs that provide opportunities to students in all grades, that have high teacher-student interactions, and maintain curriculums aligned with in-person offerings.

As of January 2022, 144 districts currently have approved pupil attendance waivers, via the 2021 KBE approved waiver process for full-time enrolled online, virtual, and remote learning students. Through spring 2022 program area staff will continue data collection efforts to further inform permanent policy recommendations as the desire is to ultimately move away from this (second and possibly final) temporary pupil attendance waiver strategy.

With the expiration of the Governor’s Executive Orders and the KBE’s Emergency Regulations, all districts must revert to the current performance-based model outlined in 702 KAR 7:125, Pupil attendance. Programs designed for elementary aged learners during the pandemic will not be able to function moving forward despite the success seen by districts.

*Summary of Issue:*

To provide necessary flexibilities, and at the request of Kentucky Superintendents, the KDE created a waiver process for districts seeking to expand full-time online, virtual, and remote learning enrollment opportunities to elementary aged students for the 2021-2022 school year only. This waiver process addresses two concerns frequently cited by Superintendents. First, during the pandemic, districts received “participation” credit for students enrolled in online, virtual, and remote learning programs. Funding, including SEEK, which is calculated using average daily attendance (ADA), was determined pursuant to SB 1 from the 2021 Extraordinary Session. Without the waiver, districts enrolling middle and high school students under the “performance based” model generate funding for the district only if the student passes the course and the districts get no partial funding if the student transfers before the course ends. This waiver gives full-time online, virtual, and remote learning students an attendance tracking system that aligns with Kentucky’s half day/whole day attendance funding model.

The second issue is that districts have learned that certain elementary aged students, based on locally determined student enrollment requirements, thrive in the online, virtual, and remote learning environment and may have out-performed their expected in-classroom outcomes.

Parents have requested this option be made available to their students in the coming school year and, in some instances, have indicated they will pursue educational opportunities outside of their local public school district if they are unable to receive full-time online, virtual and remote learning enrollment options. Without this waiver, these students will be denied the opportunity to learn in their most successful environment.

Covid was the catalyst and initial rationale for this waiver request. However, we want to provide a way to offer continuation of these full-time online, virtual, and remote learning enrollment options until we are able to better evaluate student success data. Portions of targeted student data regarding these programs will not be available for districts to further evaluate until October 2022; therefore, we are requesting a continuation of the existing waiver approval process through the 2022-2023 school year.

To expedite and streamline the waiver process, the KDE asked districts to complete an application that consisted of a narrative of their specific plans for online, virtual, and remote learning in 2021-2022 and then signed off on fifteen (15) assurances committing to providing high quality experiences for their students:

- 1. Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this waiver. The district shall continue to count Performance-Based virtual students in pupil attendance subject to all provisions of 702 KAR 7:125.*
- 2. Attendance shall be tracked by a certified teacher at a course level for virtual middle and high school students covered by this waiver. Each course shall have attendance stored in the student information system attendance tables following KDE guidance. Attendance shall be tracked by a certified teacher at least two times each school day for fully virtual elementary school students with checks three hours apart. Each course shall have attendance stored in the student information system attendance tables following KDE guidance. These courses shall not be set up as virtual/performance-based courses.*
- 3. Attendance clerks or other assigned district personnel shall reconcile attendance for each course/period to ensure proper codes are entered for absent students. Attendance events shall continue to be entered at the office level (i.e. Dr. Excuses/parent excuses). District understands and agrees that attendance information provided shall be subject to audit by KDE.*
- 4. All truancy laws shall be followed for virtual students. District shall develop and implement policies to address virtual attendance absences, including the attendance status of students with an internet outage and the process to return students to in-person instruction for truancy violations, in addition to legal action which may be required by KRS 159.150, 159.180, and other applicable truancy laws.*
- 5. Only students whose families have requested to be enrolled in the virtual school, program, or academy are included under this waiver, accompanied by school and district approved documentation resulting from locally adopted policies for enrollment. No student shall be involuntarily placed in the virtual school, program, or academy. No student shall be placed in the virtual school, program, or academy solely due to disciplinary reasons. The Admissions and Release Committee (ARC) of any student with an Individual Education Program (IEP) pursuant to the Individuals with Disabilities Education Act (IDEA) shall document the student's enrollment in the virtual school, program, or academy in the ARC Conference Summary.*
- 6. All students shall be full-time enrolled in the virtual school, program, or academy.*

7. Only students with determined appropriate digital access and support beyond the school campus shall be candidates for enrollment in the virtual school, program, or academy. The district shall establish and implement an application and on-boarding process to ensure students and families understand the expectations for full-time enrollment in a virtual school, program, or academy and a determination of candidacy. The district shall ensure all students enrolled in virtual school, program, or academy have appropriate digital access to fully participate in and access the virtual program.

8. The virtual school, program, or academy shall have teachers and other staff assigned to support and provide instruction aligned to the grade-level expectations established in the Kentucky Academic Standards (KAS), including the selection, vetting, and usage of high-quality instructional resources aligned to the KAS and grade-level appropriate work. The use of standards-aligned high-quality instructional resources and curriculum is also assured via the annual superintendent assurance regarding the Kentucky Digital Learning Guidelines. District shall maintain evidence of having systemic formative assessment processes in place to: (1) accurately measure student progress on grade-level standards for students enrolled in a virtual school, program, or academy; and (2) support students enrolled in the virtual school, program, or academy needing accelerated learning on grade-level standards within Tier 1 universal instruction as well as those students who need more targeted Tier 2 and Tier 3 interventions and supports.

9. The virtual school, program, or academy shall implement synchronous (real-time or live) strategies and digital platforms for two-way student to teacher visual and verbal interactions. Additionally the virtual school, program, or academy shall utilize a learning management system (LMS) or other digital platforms that allows teachers to monitor student's progress, interactions and engagement with the teacher and other students online for the review of student work and completion of assignments in both real-time and on-demand (asynchronous interactions). District understands and that frequent live, regularly-scheduled contact with a Kentucky certified teacher is suggested to produce more effective results and assures that the virtual school, program, or academy implemented pursuant to waivers contained herein will prioritize frequent live, regularly-scheduled contact with a Kentucky certified teacher.

10. The district shall fully comply with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and all applicable laws and regulations for the education of students with disabilities. District shall fully implement accommodations and Individual Education Programs (IEP) for students with disabilities enrolled in a virtual school, program, or academy. District shall ensure that all Section 504 Teams and Admissions and Release Committees (ARC) were involved in determining how all special education, related services, and accommodations will be implemented for students with disabilities in the virtual setting.

11. The district shall ensure a system of high-quality professional learning on the high-quality instructional resources and on evidence-based instructional practices for virtual learning.

12. Fully virtual students shall be assigned a schedule that aligns with the standard day of in-person students. Virtual student schedules shall adhere to the standard day and hour requirements set forth at KRS 158.070.

13. District shall document all fully virtual students as non-transported for transportation funding purposes.

14. District understands that meals provided to students in a non-congregate setting for school

year 2021-2022 are not eligible to receive reimbursement from the United States Department of Agriculture under the USDA School Meal Programs, absent approved USDA waivers. District shall review and consider how this may impact students enrolled in a virtual school, program, or academy pursuant to this waiver.

15. District understands that pursuant to KRS 156.010, the Commissioner of Education has authority for monitoring the management of school districts, including administration and finance, implementation of state and federal laws and regulations, and student performance. District understands that KRS 156.210 provides the Commissioner of Education with access to the papers, books and records of all teachers, superintendents, or other public-school officials. District hereby agrees that such authority specifically extends to all aspects of its operation of a virtual school, program, or academy pursuant to this waiver request and MOU. District hereby agrees that it shall ensure full and timely cooperation during any program review or audit of any aspect of its operation of a virtual school, program, or academy pursuant to this waiver request and MOU.

The following list of 144 districts originally submitted the requested application materials for the 2021-2022 school year (109 approved at the May KBE meeting and 35 approved following the meeting). Their applications were reviewed by KDE staff and deemed appropriate for approval by the KBE. If approved, it is unclear at this time how many districts will submit for a continuation of this pupil attendance waiver.

- Adair County
- Allen County
- Anderson County
- Ashland Independent
- Ballard County
- Barbourville Ind
- Barren County
- Bath County
- Beechwood Independent
- Bell County
- Bellevue Independent
- Berea Independent
- Boone County
- Bourbon County
- Boyd County
- Boyle County
- Bracken County
- Breathitt County
- Breckinridge County
- Bullitt County
- Burgin Independent
- Butler County
- Caldwell County
- Calloway County
- Campbellsville Independent
- Carlisle County
- Carter County
- Casey County
- Caverna Independent
- Christian County

- Clark County
- Clay County
- Clinton County
- Cloverport Independent
- Corbin Independent
- Covington Independent
- Crittenden County
- Cumberland County
- Danville Independent
- Daviess County
- Dawson Springs Independent
- Edmonson County
- Elizabethtown Independent
- Elliott County
- Eminence Independent
- Erlanger-Elsmere Independent
- Estill County
- Fairview Independent
- Fayette County
- Fleming County
- Floyd County
- Franklin County
- Fulton Independent
- Gallatin County
- Garrard County
- Glasgow Independent
- Graves County
- Grayson County
- Green County
- Greenup County
- Hardin County
- Harlan County
- Harlan Independent
- Harrison County
- Hart County
- Henderson County
- Henry County
- Hickman County
- Hopkins County
- Jackson County
- Jackson Independent
- Jefferson County
- Jenkin's Independent
- Jessamine County
- Johnson County
- Kenton County
- Knott County
- Larue County
- Lawrence County
- Lee County
- Letcher County
- Lewis County

- Lincoln County
- Livingston County
- Logan County
- Madison County
- Magoffin County
- Marion County
- Marshall County
- Martin County
- Mason County
- Mayfield Independent
- McCracken County
- McCreary County
- McLean County
- Meade County
- Menifee County
- Mercer County
- Metcalfe County
- Middlesboro Independent
- Monroe County
- Montgomery County
- Morgan County
- Muhlenberg County
- Murray Independent
- Nelson County
- Newport Independent
- Nicholas County
- Oldham County
- Owen County
- Owsley County
- Paducah Independent
- Paintsville Independent
- Paris Independent
- Perry County
- Pike County
- Pikeville Independent
- Pineville Independent
- Pulaski County
- Robertson County
- Rockcastle County
- Rowan County
- Russell County
- Russellville Independent
- Scott County
- Shelby County
- Simpson County
- Somerset Independent
- Southgate Independent
- Spencer County
- Taylor County
- Todd County
- Trigg County
- Trimble County

- Union County
- Walton-Verona Independent
- Warren County
- Washington County
- Wayne County
- Webster County
- Whitley County
- Williamsburg Independent
- Wolfe County
- Woodford County

*Budget Impact:*

Budget impact is not yet quantifiable and is dependent upon future attendance data of remote learners.

**GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:**

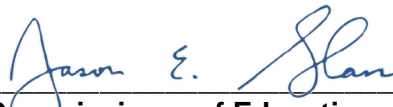
- This original waiver proposal was discussed with Superintendents at the Superintendent Webcast on April 13, 2021.
- A voluntary survey to 2021-2022 approved districts opened January 11, 2022 and closed February 3, 2022. 104 of 144 districts responded (72%). Of the 104 responses, 84 districts indicated actively utilizing the waiver. Of the 20 districts not currently utilizing the waiver, 18 indicated they would apply or consider applying for the waiver if made available for the 2022-2023 school year.

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**Commissioner of Education**



Category:  Educator Workforce Diversity  Portrait of a Graduate Partnerships  Racial Equity  
Commitment  Student-Centered Accountability System  Early Childhood  District Support