

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 702 KAR 7:125. Pupil attendance.

6 RELATES TO: KRS 157.320, 157.350, [~~157.360~~], 158.030, 158.070, 158.100, 158.240,  
7 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

8 STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 157.360, 158.070

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky  
10 Board of Education to promulgate administrative regulations establishing standards which  
11 school districts shall meet in student, program, service, and operational performance.  
12 KRS 157.320 defines average daily attendance of pupils for funding purposes under the  
13 Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK  
14 funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish  
15 the age for compulsory school attendance. KRS 158.070 defines the school term. KRS  
16 158.240 [~~and 159.035~~] defines attendance credit for moral instruction, and KRS 159.035  
17 defines attendance for 4-H activities, military basic training, page programs of the General  
18 Assembly, attendance at the Kentucky State Fair, educational enhancement  
19 opportunities, and when a parent or custodian is called to active military duty. KRS  
20 161.200 requires attendance records to be kept by teachers. This administrative  
21 regulation establishes a uniform method of recording pupil attendance.

1 Section 1. Daily Attendance.

2 (1) Daily attendance of pupils in elementary schools shall be determined by taking  
3 attendance one (1) time each day prior to the start of instruction and maintaining a pupil  
4 entry and exit log at each school.

5 (2) Daily attendance of pupils in middle and high schools shall be determined by taking  
6 attendance by class period and maintaining a pupil entry and exit log at each school.

7 (3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom,  
8 time of late arrival, time of early departure (with the reason for both listed), and other  
9 information required by the local board of education. For elementary pupils who are  
10 signed out, the pupil entry and exit log shall also include a signature of:

11 (a) A parent;

12 (b) A legal guardian; or

13 (c) An adult with proof of identification and for whom the school has received a written  
14 authorization from the parent or legal guardian.

15 (4) Pupils shall be physically present in the school to be counted in attendance except  
16 under the following conditions:

17 (a) The pupil is a participant in a co-curricular instructional activity that has been  
18 authorized by the local board of education and is a definite part of the instructional  
19 program of the school;

20 (b) The pupil is a participant in an activity as provided in either KRS 158.240 or  
21 159.035;

22 (c) The pupil is participating in an off-site virtual high school class or block. A pupil may  
23 be counted in attendance for a virtual high school class or block for the year or

1 semester in which the pupil initially enrolled in the class or block if the pupil  
2 demonstrates proficiency in accordance with local policies required by 704 KAR 3:305,  
3 Section 7;

4 (d) The pupil's mental or physical condition prevents or renders inadvisable attendance  
5 in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil  
6 being served in the home/hospital program shall receive, at a minimum, the instruction  
7 required pursuant to KRS 158.033~~[KRS 157.270]~~;

8 (e) The pupil has been court ordered to receive educational services in a setting other  
9 than the classroom. A pupil being served through a court order shall receive at a  
10 minimum, the instruction required pursuant to paragraph (d) of this subsection;

11 (f) The pupil has an individual education program (IEP) that requires less than full-time  
12 instructional services;

13 (g) The pupil is participating in standards-based, performance-based credit that is  
14 awarded in accordance with 704 KAR 3:305, Section 7 and that falls within one (1) or  
15 more of the categories of standards-based course work outlined in 704 KAR 3:305. A  
16 pupil may be counted in attendance for performance-based credit for a class or block  
17 for the year or semester in which the pupil initially enrolled in the class or block if the  
18 pupil demonstrates proficiency in accordance with local policies required by 704 KAR  
19 3:305, Section 7;

20 (h) The pupil participates in a school that is authorized by the commissioner to design  
21 and deliver an educational program so that all graduation requirements are based on  
22 pupil proficiency of standards and performance, rather than time and Carnegie units,  
23 as authorized in 704 KAR 3:305, Section 7; or

1 (i) The pupil is enrolled and participating in a full-time, online, virtual and remote  
2 learning program pursuant to the requirements of 704 KAR 3:535. A pupil shall be  
3 counted in attendance pursuant to the requirements of 704 KAR 3:535.~~[For school year~~  
4 ~~2021-2022, the pupil is in quarantine due to documented possible exposure to COVID-~~  
5 ~~19 or isolation due to COVID-19 infection, in accordance with Centers for Disease~~  
6 ~~Control and Kentucky Department for Public Health guidelines, and is receiving at least~~  
7 ~~the minimum amount of daily instruction required pursuant to KRS 158.060].~~

8 (5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control,  
9 including inclement weather or failure of the transportation system to operate, the pupil  
10 shall be counted absent or tardy. However, a pupil being transported to school on a  
11 district school bus or district vehicle shall not be considered tardy if the cause of the  
12 lateness is due to the bus or vehicle arriving after the beginning of the school day.

13 (6) The local board of education shall determine by local board policy what constitutes  
14 an excused and an unexcused absence.

15 (7) A pupil shall not be allowed to make up absences for the purpose of including make-  
16 up activities in the calculation of average daily attendance.

17 Section 2. Calculation of Attendance. The guidelines in this section shall be used to  
18 calculate pupil attendance for state funding purposes.

19 (1) A full day of attendance shall be recorded for a pupil who is in attendance at least  
20 sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

21 (2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of  
22 the regularly-scheduled school day for the pupil's grade level.

1 (3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent  
2 to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade  
3 level.

4 (4) A full day absence shall be recorded for a pupil who is absent more than eighty-four  
5 (84) percent of the regularly-scheduled school day for the pupil's grade level.

6 Section 3. Shortened School Day. A local board of education may permit an arrangement  
7 whereby a pupil has a shortened school day in accordance with KRS 158.060 or local  
8 board of education policy. The time a pupil is in attendance shall be included in calculating  
9 the district's average daily attendance.

10 Section 4. Dual Enrollment. A local board of education may permit an arrangement in  
11 which a pupil pursues part of the pupil's education under the direction and control of one  
12 (1) public school and part of the pupil's education under the direction and control of  
13 another public or nonpublic school. The time a pupil is served by each public school shall  
14 be included when calculating the district's average daily attendance.

15 Section 5. Private School Placement. If a local school district, under the provisions of KRS  
16 157.360(7), enrolls a child with a disability in a private school or agency, the private school  
17 or agency shall certify the attendance of the child to the local school district at the close  
18 of each school month.

19 Section 6. Age of Pupil.

20 (1) If a local school district enrolls in the entry level program a pupil who will not be five  
21 (5) years of age on or before August 1 of the year of enrollment, the total aggregate  
22 days attendance for the pupil shall not be included in calculating the district's average

1 daily attendance except under the conditions established in subsection (3) of this  
2 section.

3 (2) If a local school district enrolls in the second level of the primary program a pupil who  
4 will not be six (6) years of age on or before August 1 of the year of enrollment, the total  
5 aggregate days attendance for the pupil shall not be included in calculating the district's  
6 average daily attendance except under the conditions established in subsection (3) of  
7 this section.

8 (3)

9 (a) The local board of education shall have determined that the pupil is eligible for  
10 enrollment in the appropriate level of the primary program after academic, social, and  
11 developmental progress records from multiple data sources are reviewed by a team  
12 and determined to support accelerated placement. These sources shall include:

- 13 1. Anecdotal records;
- 14 2. A variety of pupil work samples, including evidence of pupil self-reflection; and
- 15 3. Standardized test results.

16 (b) The team shall be comprised of three (3) members who have knowledge of the  
17 pupil's developmental skills and abilities. Team members shall be chosen from these  
18 categories:

- 19 1. Teachers;
- 20 2. Parents;
- 21 3. Psychologists;
- 22 4. Principals; or
- 23 5. District specialists.

1 (c) At least one (1) team member shall represent the district office and have an  
2 understanding of early childhood development and knowledge of developmentally-  
3 appropriate practices.

4 (d) If a pupil is recommended by the local board of education for accelerated placement  
5 into the entry or second level of the primary program, the district shall forward that  
6 recommendation to the department for approval with:

- 7 1. A list of data sources used in making the decision;
- 8 2. A list of all individuals who submitted the data sources;
- 9 3. A list of team members; and
- 10 4. The data needed to create a pupil attendance record.

11 (4) A local school district shall enroll any resident pupil, not holding a high school  
12 diploma, under the age of twenty-one (21) years who wishes to enroll. The days  
13 attended after the pupil's 21st birthday shall not be included in the calculation of the  
14 district's average daily attendance.

15 Section 7. Due Dates for Certain Reports.

16 (1) The Growth Factor Report for the first two (2) school months of the school year  
17 created pursuant to KRS 157.360(9) shall be submitted to the department through the  
18 statewide student information system within ten (10) business days following the last  
19 day of the second school month or by November 1 of each year, whichever occurs first.

20 (2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report  
21 (SAAR) for the school year shall be submitted to the department through the statewide  
22 student information system by June 30 of each year.

23 Section 8. Nonresident Pupils.

1 (1)

2 ~~[(a) The district of attendance shall provide a list of all enrolled nonresident students~~  
3 ~~to the district of residence not later than November 1 of each school year. [A written~~  
4 ~~agreement executed by local boards of education for enrollment of nonresident pupils~~  
5 ~~as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the~~  
6 ~~resident district no later than October 1 of the school year prior to the school year to~~  
7 ~~which it will apply.~~

8 ~~(b) The written agreement shall include the specific terms to which the districts have~~  
9 ~~agreed.~~

10 ~~c) A list of the names of all nonresident pupils enrolled in the attending district covered~~  
11 ~~by the agreement shall be filed in both the attending district and the resident district~~  
12 ~~not later than November 1 of the school year covered by the agreement.~~

13 ~~(d) A change may be made to the original nonresident pupil agreement up to the close~~  
14 ~~of the school year to include the nonresident pupils enrolling after the close of the~~  
15 ~~second school month. The amendment shall be filed in both the attending district and~~  
16 ~~the resident district no later than June 30 of each year.]~~

17 (2) The district of attendance shall provide to the district of residence a list of the names  
18 of all nonresident pupils whose parent is an employee of the district as provided by KRS  
19 157.350(4)(c) ~~[and who are not covered by the nonresident agreement shall be filed in~~  
20 ~~both the attending district and the resident district]~~ not later than November 1 of  
21 each~~[the]~~ school year.

22 ~~[(3)-~~



1 ~~(a) If an agreement cannot be reached for the enrollment of nonresident pupils as~~  
2 ~~provided in KRS 157.350(4)(a), a local board of education may file an appeal to the~~  
3 ~~commissioner no later than October 15 of the school year prior to the school year to~~  
4 ~~which an agreement would apply.~~

5 ~~(b) A local board of education shall file its appeal to the commissioner in person or by~~  
6 ~~mail at the following address: Commissioner of Education; Nonresident Student~~  
7 ~~Appeal; 300 Sewer Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of~~  
8 ~~education filing an appeal to the commissioner shall include written arguments and~~  
9 ~~documents in support of its position.~~

10 ~~(c) Upon receipt of an appeal pursuant to KRS 157.350(4)(a), the commissioner shall~~  
11 ~~notify the local boards of education involved in the dispute and provide a deadline not~~  
12 ~~to exceed twenty (20) calendar days for the responding local board of education to file~~  
13 ~~written arguments and documents supporting its position. The commissioner shall~~  
14 ~~issue a written decision settling the dispute within thirty (30) calendar days following~~  
15 ~~the deadline for the responding local board of education to file written arguments and~~  
16 ~~documents supporting its position.~~

17 ~~(4)-~~

18 ~~(a) A local board of education may appeal the commissioner's written decision to the~~  
19 ~~state board of education by filing a notice of appeal and request for hearing no later~~  
20 ~~than fifteen (15) calendar days following issuance of the commissioner's written~~  
21 ~~decision.~~

22 ~~(b) A notice of appeal and request for hearing from a local board of education shall~~  
23 ~~include:~~

- ~~1. The name of the school district filing the notice of appeal and request for hearing;~~
- ~~2. The case number, if any, assigned to the commissioner's written decision;~~
- ~~3. The date of the commissioner's written decision;~~
- ~~4. A statement of the issues which form a basis for the notice of appeal and request for hearing; and~~
- ~~5. The signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.~~

~~(c) A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.~~

~~(5)-~~

~~(a) Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.~~

~~(b) Following issuance of a notice of hearing and assignment of a hearing officer as set forth in subsection (5)(a) of this section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this section.~~

~~(c) Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education pursuant to KRS 13B.110.~~

1 ~~(d) Parties may file exceptions to the hearing officer's recommended order pursuant to~~  
2 ~~KRS 13B.110.~~

3 ~~(e) Following receipt of the hearing officer's recommended order and any exceptions~~  
4 ~~filed by the parties, or following conclusion of the administrative hearing if conducted~~  
5 ~~before a quorum of the state board of education, the state board of education shall~~  
6 ~~issue a final order pursuant to KRS 13B.120.]~~

7 Section 9. Weather-related Low Attendance Days.

8 (1) The SAAR may:

9 (a) Substitute the prior year's average daily attendance for up to ten (10) designated  
10 weather-related low attendance days; and

11 (b) Shall constitute certification that the low attendance was due to inclement weather,  
12 in accordance with KRS 157.320(17).

13 (2) Documentation that the low attendance was due to inclement weather shall be  
14 retained at the central office.

15 Section 10. Nontraditional Instruction Program Health and Safety Closings.

16 (1) The SAAR may:

17 (a) Substitute the prior year's average daily attendance for up to ten (10) designated  
18 instructional days, in accordance with KRS 158.070(8)~~[(40)]~~; and

19 (b) Shall constitute certification that the low attendance was due to health and safety  
20 reasons.

21 (2) Documentation that the low attendance was due to health and safety reasons shall  
22 be retained at the central office.

1 (3) Days granted in this section shall be in addition to any days granted under Section 9  
2 of this administrative regulation.

3 Section 11. Original Source of Attendance Data.

4 (1) The school's records of daily attendance and teacher's monthly attendance reports,  
5 daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital  
6 Program Form, shall be the original source of attendance data for all pupils enrolled in  
7 the public common schools and shall be verified at the end of each school month.

8 (2) The school's records of daily attendance and teachers' monthly attendance reports  
9 shall be signed by a designated certified person within the elementary or secondary  
10 school who shall be responsible for verifying and certifying the state attendance  
11 documents for accuracy.

12 (3) The school's records of daily attendance and tenth month teacher's monthly  
13 attendance reports shall be retained at least twenty (20) years. The daily and class  
14 period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full  
15 school years after the current school year.

16 Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall  
17 be used to indicate the enrollment status of pupils:

18 (1) E01 - A pupil enrolled for the first time during the current year in either a public or  
19 nonpublic school in the United States;

20 (2) E02 - A pupil previously enrolled during the current school year in either a public or  
21 nonpublic school in another state who has not previously enrolled in Kentucky during  
22 the current school year;

- 1 (3) E03 - A pupil enrolling for the first time during the current school year in either a  
2 public or nonpublic school, who withdrew as a W07, W24 or W25 for previous school  
3 years;
- 4 (4) R01 - A pupil received from another grade or grade level in the same school year, or  
5 having a change in schedule structure or enrollment service type;
- 6 (5) R02 - A pupil received from another public school in the same public school district;
- 7 (6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from  
8 a school district in Kentucky during the current school year, who has not entered any  
9 other school during the intervening period;
- 10 (7) R20 - A pupil previously enrolled in a home school in Kentucky during the current  
11 school year;
- 12 (8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home  
13 schools and charter schools) in Kentucky during the current school year;
- 14 (9) R22 – A pupil previously enrolled in a charter school in Kentucky during the current  
15 school year;
- 16 (10) W01 - A pupil transferred to another grade in the same school or with grade level  
17 changes in the same school mid-year, or with a change in schedule structure or  
18 enrollment service type. The reentry code to use with W01 shall be R01;
- 19 (11)[(10)] W02 - A pupil transferred to another public school in the same public school  
20 district. The reentry code to use with W02 shall be R02;
- 21 (12)[(11)] W07 - A pupil withdrawn due to those communicable medical conditions that  
22 pose a threat in school environments listed in 902 KAR 2:020, Section 2(1),  
23 accompanied by a doctor's statement certifying the condition, or any other health-related

1 condition for which the pupil is too ill to participate in regular school attendance, local  
2 homebound instructional services or hospital setting instructional services, or if the pupil  
3 has obtained a doctor's statement certifying the condition. The reentry code to use with  
4 W07 shall be R06;

5 (13)~~(12)~~ W08 - A pupil withdrawn due to death;

6 (14)~~(13)~~ W12 - A pupil under the jurisdiction of the court. For purposes of the W12  
7 code, a pupil may be considered under the jurisdiction of the court on the day the petition  
8 is filed with the court. The reentry code to use with W12 shall be R06. For accountability  
9 purposes, a W12 shall be considered a dropout if the district cannot substantiate  
10 enrollment in the proper educational setting as designated by the court;

11 (15)~~(14)~~ W17 - An entry level pupil in the primary program, withdrawn during the first  
12 two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian  
13 or other custodian and the school in accordance with 704 KAR 5:060;

14 (16)~~(15)~~ W20 - A pupil transferred to a home school. The reentry code to use with W20  
15 shall be R20;

16 (17)~~(16)~~ W21 - A pupil transferred to a nonpublic school (excluding home school). The  
17 reentry code to use with W21 shall be R21;

18 (18)~~(17)~~ W22 - A pupil who has transferred to another Kentucky public school district  
19 and for whom a request for pupil records has been received or enrollment has been  
20 substantiated;

21 (19)~~(18)~~ W23 - A pupil withdrawn for a second or subsequent time who initially withdrew  
22 as a W24 or W25 during the current school year;

- 1 ~~(20)~~~~(19)~~ W24 - A pupil who has moved out of this public school district for whom  
2 enrollment elsewhere has not been substantiated or failed to attend on the first day of  
3 school in a district but thereafter enrolled in the district;
- 4 ~~(21)~~~~(20)~~ W25 – A pupil who is at least eighteen (18) years of age and has withdrawn  
5 from public school;
- 6 ~~(22)~~~~(21)~~ W26 - A pupil who has withdrawn from school after completing a secondary  
7 GED program and receiving a GED certificate;
- 8 ~~(23)~~~~(22)~~ W27 – A pupil who has withdrawn from school and subsequently received a  
9 GED;
- 10 ~~(24)~~~~(23)~~ W28 - A pupil who has reached the maximum age for education services  
11 without receiving a diploma or an alternative high school diploma;
- 12 ~~(25)~~~~(24)~~ W29 - A pupil who has moved out of state or out of the United States;
- 13 ~~(26)~~~~(25)~~ W30 - A pupil with an IEP enrolled in Grade 14 who has previously received  
14 an alternative high school diploma, re-enrolled, and withdrew in the middle of the  
15 reporting school year;
- 16 ~~(27)~~~~(26)~~ W31 - A pupil in the preschool program, withdrawn due to immaturity or mutual  
17 agreement by the parent, guardian or other custodian and the school;
- 18 ~~(28)~~ W32 - A pupil transferred to a charter school. The reentry code to use with W32  
19 shall be R22;
- 20 ~~(29)~~ C01 - A pupil who completes the school year in the school of the most current  
21 enrollment;
- 22 ~~(30)~~~~(27)~~ G01 - A pupil who graduates in less than four (4) years;
- 23 ~~(31)~~~~(28)~~ G02 - A pupil who graduates in four (4) years;

- 1 ~~(32)~~~~(29)~~ G03 - A pupil who graduates in five (5) or more years;
- 2 ~~(33)~~~~(30)~~ G04 - A pupil who graduates in six (6) or more years; and
- 3 ~~(34)~~~~(31)~~ NS - A pupil who completed the prior year with a C01 and was expected to
- 4 enroll in the district but did not enroll by October 1 of the current year whose enrollment
- 5 elsewhere cannot be substantiated.

6 Section 13. Suspension.

- 7 (1) For a pupil who has been suspended, a code of S shall be used to indicate the days
- 8 suspended.
- 9 (2) Suspension shall be considered an unexcused absence.

10 Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either

11 Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the

12 person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish

13 culture of origin regardless of race. The term "Spanish origin" may be used in addition to

14 "Hispanic/Latino".

15 Section 15. Racial Category Codes. One (1) or more of the following racial codes shall

16 be used to indicate the racial category of pupils:

- 17 (1) White - A person having origins in any of the original peoples of Europe, North Africa,
- 18 or the Middle East;
- 19 (2) Black or African American - A person having origins in any of the black racial groups
- 20 of Africa;



1 (3) Asian - A person having origins in any of the original peoples of the Far East,  
2 Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China,  
3 India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

4 (4) American Indian or Alaskan Native - A person, having origins in any of the original  
5 peoples of North America and South America (including Central America), who  
6 maintains cultural identification through tribal affiliation or community attachment; and

7 (5) Native Hawaiian or other Pacific Islander - A person having origins in any of the  
8 original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

9 Section 16. Withdrawal and Transfer Records. (1) The request for records and other  
10 information involving the withdrawal and transfer of pupils shall be processed by the local  
11 superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained  
12 in the pupil's permanent file.

13 Section 17. Incorporation by Reference.

14 (1) "Home/Hospital Program Form", October 2019, is incorporated by reference.

15 (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
16 law, at the Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort,  
17 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be  
18 viewed at [www.education.ky.gov](http://www.education.ky.gov).

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on XXXXXXXX, 2022 at 10:00 am 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 XXXXXXXX, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd G. 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](mailto:regcomments@education.ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

704 KAR 3:305

Todd G. Allen, [Todd.Allen@education.ky.gov](mailto: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 amendment establishes a uniform method of recording pupil attendance. Pupil attendance is used for school district funding purposes.

(b) The necessity of this administrative regulation:

It is important that attendance be recorded uniformly across school districts because district average daily attendance is used to calculate Support Education Excellence in Kentucky (SEEK) funding. For an equitable distribution attendance must be recorded the same across districts.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

As stated above, this administrative regulation establishes a uniform method of recording pupil attendance which is used for school district SEEK funding purposes.

(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 amendment will authorize districts to take student attendance and thereby receive funding for students enrolled in a full-time, virtual online program operated pursuant to the proposed new regulation, 704 KAR 3:535. This amendment also removes no longer applicable provisions related to the resolution process for district disputes related to nonresident students. It further amends enrollment and withdrawal codes for clarity related to nonresident students and charter school students.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to enable students to be counted in attendance when enrolled in a school district's full-time virtual online instructional program. It is also necessary to clean-up existing provisions related to nonresident and charter students to conform to statutory requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. The current regulation establishes the requirements to be counted in attendance for funding purposes. The proposed amendment permits a district to count students in attendance pursuant to the requirements of the contemporaneously filed proposed regulation, 704 KAR 3:535. That regulation establishes the requirements for virtual online programs. Such programs are optional and at the discretion of school districts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a mechanism for districts that operate full-time, virtual online programs pursuant to the requirements of 704 KAR 3:535 to take attendance and receive funding for students enrolled and attending those programs. KRS 157.360 requires district to receive funding for students in average daily attendance. Further, students no longer have to attend a nonresident district pursuant to an agreement between the district of residence and the nonresident district. Rather, districts must adopt policies related to the acceptance of nonresident students. Therefore, the provisions of the existing regulation related to the dispute resolution process when districts cannot agree on nonresident student contracts are no longer needed. The amendment strikes the dispute resolution provisions consistent with KRS 157.350 and 158.120.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Local 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 regulation amendment will allow districts to take attendance for students enrolled in a virtual online instructional program operated pursuant to 704 KAR 3:535. This will provide districts, parents/custodians and students with more instructional options. Additionally, the proposed amendment removes the no longer valid school district nonresident student dispute process.

(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:

This amendment establishes that a district operating a full-time virtual online instructional program may count students in attendance when the program is operated pursuant to 704 KAR 3:535. School districts that choose to operate a full-time virtual online program will need to conform to the requirements of the proposed new regulation, 704 KAR 3:535.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Any costs associated with this regulation would be minimal and limited to school district personnel staff time learning about the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The amendment permits school districts to operate virtual online programs and receive funding for students enrolled in such programs. This will provide additional instructional opportunities for students.

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

(a) Initially:

Any additional costs associated with the implementation of the regulation would be minimal to nil. These would only be associated with school district staff time in learning of the new regulatory provisions.

(b) On a continuing basis:

There are no continuing costs expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

School district general funds.

(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, increased funding or fees will be necessary to implement this regulation.

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

There are no fees associated with this regulation.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. The proposed amendment is applicable to all school districts.

## FISCAL NOTE

704 KAR 3:305

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- (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 156.160, 156.010, 157.320, 157.360 and 158.070.

(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?

Districts that operate full-time virtual online instructional programs pursuant to 704 KAR 3:535 will receive funding students in attendance. Their attendance will be included in the district's average daily attendance. Districts will receive the same per pupil funding for students enrolled in online virtual programs as for in-person students. It is unknown whether virtual programs will attract additional nonresident or resident homeschool students and generate additional revenue for districts operating such programs.

(c) 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?

Virtual programs will generate per pupil funding for school districts operating such programs. It is unknown whether virtual programs will attract additional nonresident or homeschool students and thus, additional revenue to districts.

(d) How much will it cost to administer this program for the first year?

There is no cost associated with this regulation. Any costs of operating a full-time virtual online program pursuant to 704 KAR 3:535 would be dependent on the district's particular program.

(e) How much will it cost to administer this program for subsequent years?

There are no expected new costs from this proposed regulation amendment.

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:

There are no costs associated with this regulation. This regulation establishes the procedures for school districts to use for recording student enrollment and attendance. Student attendance is used to determine school district funding.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The regulation establishes the ability of a district to take attendance and receive funding for students enrolled in a virtual online program operated pursuant to 704 KAR 3:535. In addition, the amendment strikes the current dispute resolution process for nonresident student agreement disputes between districts. Per statute, nonresident agreements are no longer necessary. Rather, districts are required to adopt nonresident policies. District may see some unknown savings by the elimination of the agreement.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Unknown. Savings to districts may result from the elimination of the nonresident student agreement dispute resolution process. The requirement that districts have policies rather than entering into agreements regarding nonresident students is statutory.

(c) How much will it cost the regulated entities for the first year?

Unknown. However, no new costs are expected. Enrolling students and taking attendance is a continuing requirement for districts.

(d) How much will it cost the regulated entities for subsequent years?

Unknown. However, no new costs are expected. Enrolling students and taking attendance is a continuing requirement for districts.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

Specific dollar estimates are impossible. Districts that operate a full-time virtual online instructional program per 704 KAR 3:535 may see additional revenue if additional nonresident or homeschool students enroll in the district. This regulation provides the mechanism for students enrolled in such a program to be counted in attendance and receive state education per-pupil funding.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

The proposed regulation amendment will not have a "major economic impact" on local school districts. The regulation permits school districts to take attendance and receive



funding for students enrolled in a full-time virtual online instructional program operated pursuant to 704 KAR 3:535.

#### SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The Home/Hospital Program Form is a one page document that school districts use to record instructional hours for students receiving educational services at home or in a hospital because they are not able to attend school pursuant to KRS 158.033 and 159.030(2).