

Statement of Emergency

701 KAR 8:050E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(3) to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. This emergency administrative regulation is necessary to meet statutory deadlines outlined in KRS 160.1591 and KRS 160.15911. Due to promulgation time, an ordinary regulation would not be effective in time to meet these statutory deadlines. Pursuant to KRS 160.1591, “beginning in academic year 2022-2023, any authorizer may authorize an unlimited number of public charter schools.” Further, KRS 160.15911, the Kentucky public charter school pilot project, requires certain authorizers located in the pilot project to “solicit, review, and approve at least one (1) charter application for a public charter school” before July 1, 2023.” This regulation is necessary to establish the calculation and distribution of funds due to public charter schools from school districts, the schedule of distribution of funds, and the imposition of fines for late distribution of funds as required pursuant to KRS 160.1596. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation. This emergency administrative regulation is promulgated exclusively to comply with House Bill 9 (R.S. 2022).

Andy Beshear, Governor

Lu S. Young, Chair, KY Board of Education

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Emergency)

5 701 KAR 8:050. Charter school funding.

6 RELATES TO: KRS 160.1590, 160.1591, 160.15911, 160.1592, 160.1593, 160.1594, 160.1595,

7 160.1596, 160.1597, 160.1598, 160.1599

8 STATUTORY AUTHORITY: KRS 156.070, 160.1596

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board
10 of Education to promulgate administrative regulations governing the calculation and distribution
11 of funds due to public charter schools from school districts, the schedule of distribution of funds,
12 and the imposition of fines for late distribution of funds. This administrative regulation establishes
13 the requirements for the calculation and distribution of funds to a public charter school, the
14 schedule of distribution of funds, and the fines for failure to timely transfer funds.

15 Section 1. Definitions. (1) “Authorizer or “public charter school authorizer” is defined by KRS
16 160.1590(15).

17 (2) “Charter contract” or “contract” is defined by KRS 160.1590(4).

18 (3) “District of location” is defined by KRS 160.1590(7).

19 (4) “Public charter school” is defined by KRS 160.1590(14).

20 Section 2. Calculation of Charter School Funds. (1) Unless otherwise negotiated under KRS
21 160.1596(6) or KRS 160.1596(8), for the first school year of operation of a charter school, the

1 district of location shall calculate funds due to the charter school as set forth in KRS 160.1596(9)
2 and (13).

3 (2) For years subsequent to a charter school’s first school year of operation, unless otherwise
4 negotiated under KRS 160.1596(6) or KRS 160.1596(8), the district of location shall calculate
5 funds due to a charter school as set forth in KRS 160.1596(5), (6), and (13).

6 Section 3. Distribution of Funds for the First School Year of Public Charter School Operation.

7 (1)(a) Unless otherwise negotiated under KRS 160.1596(6) or KRS 160.1596(8), during a public
8 charter school’s first school year of operation, the district of location shall transfer to the public
9 charter school the funds required pursuant to KRS 160.1596(6)(a), minus any authorizer’s fee
10 pursuant to KRS 160.1596(10), within thirty (30) days of receipt of funds distributed pursuant to
11 KRS 157.410.

12 (b) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter
13 school’s first school year of operation, the district of location shall transfer the funds required
14 pursuant to KRS 160.1596(6)(b) and (c), minus any authorizer’s fee pursuant to KRS
15 160.1596(10), within thirty (30) days of receipt.

16 (c) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), during a public charter
17 school’s first school year of operation, the district of location shall transfer to the public charter
18 school the funds required pursuant to KRS 160.1596(13), minus any authorizer’s fee pursuant to
19 KRS 160.1596(10), within thirty (30) days of receipt.

20 (2) As a condition of receiving funding beginning with the 2024-2025 school year, the charter
21 school shall have an approved contract prior to February 1 preceding the charter school’s first
22 instructional school year.

1 (3) The district of location with the assistance of the Kentucky Department of Education shall
2 provide the public charter school with a written estimate of the projected amounts of funding that
3 will be due to the charter school through December of the first instructional school year on or
4 before February 1 preceding the charter school's first instructional year.

5 Section 4. Distribution of Funds for Subsequent School Years of Public Charter School Operation.

6 (1)(a) Unless otherwise negotiated under KRS 160.1596(6) or KRS 160.1596(8), the district of
7 location shall transfer to the public charter school the funds required pursuant to KRS
8 160.1596(6)(a), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days
9 of receipt of funds distributed pursuant to KRS 157.410.

10 (b) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location
11 shall transfer to the public charter school the funds required pursuant to KRS 160.1596(6)(b) and
12 (c), minus any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

13 (c) Unless otherwise negotiated under KRS 160.1596(6) or 160.1596(8), the district of location
14 shall transfer to the public charter school the funds required pursuant to KRS 160.1596(13), minus
15 any authorizer's fee pursuant to KRS 160.1596(10), within thirty (30) days of receipt.

16 Section 5. Authorizer's Fees. (1)(a) Any authorizer's fee under KRS 160.1596(10) shall be
17 retained by the district of location if it is the authorizer or remitted to the authorizer at the time of
18 the transfer of funds to the public charter school if the district of location is not the authorizer.

19 (b) Any authorizer fee due to the Kentucky Board of Education resulting from the appeal of an
20 authorization shall be remitted to the Kentucky Board of Education by the district of location at
21 the time of the transfer of funds to the public charter school.

22 Section 6. Fines. (1)(a) Failure of the district of location to transfer required funds to the public
23 charter school shall result in the district of location incurring a fine as set forth in KRS

- 1 160.1596(11). The fine shall be five percent (5%) of the total funds per funding period due to be
- 2 transferred.
- 3 (b) The district of location shall include the fine payment at the time of transfer of outstanding
- 4 funds to the public charter school.

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 November 30, 2022, at 10 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 November 30, 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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

701 KAR 8:050E

Todd G. 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 requirements for the calculation and distribution of funds to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds.

(b) The necessity of this administrative regulation:

This regulation is required pursuant to KRS 160.1596.

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

This administrative regulation sets forth the requirements for the calculation and distribution of funds from a district of location to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds as required by KRS 160.1596.

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

This regulation sets forth the requirements for the calculation and distribution of funds from a district of location to a charter school, the schedule of distribution of funds, and the fines for failure to timely transfer funds as required by KRS 160.1596.

(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:

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

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

N/A. This is a new regulation.

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

School districts and public charter schools.

(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:

(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:

School districts serving as a district of location for a public charter school will have to transfer funds to the charter school pursuant to the requirements of KRS 160.1596 and this regulation.

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

School districts acting as districts of location for a charter school are required to transfer a proportionate per pupil share of funding due to the charter school pursuant to KRS 160.1596. The amount will vary depending on the district and the number of pupils attending the charter school.

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

The charter school will receive funding to operate within the district of location.

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

(a) Initially:

The implementation will have an unknown minimal cost to the administrative body relating to assisting school districts in calculating the amount of funds for transfer to a public charter school.

(b) On a continuing basis:

Those costs will continue dependent on the number of charter applications received.

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

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:

The administrative regulation establishes a fine for late payments of 5% of the total payment due. However, this fine is only mandatory in the event of a late payment as required by HB 9 (2022).

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

The administrative regulation establishes a fine for late payments of 5% of the total payment due.

However, this fine is only mandatory in the event of a late payment as required by HB 9 (2022).

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

Tiering is not applied. This regulation applies to all school districts.

FISCAL NOTE

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Todd G. 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 156.070 and KRS 160.1596

(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?

This regulation will not generate revenue for school districts.

(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?

The regulation will not generate revenue.

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

Unknown.

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

Unknown.

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:

Pursuant to KRS 160.1596, this regulation provides for the calculation and distribution of funds required to be transferred from a school district to a charter school located in the district. The school district will transfer a per pupil proportionate share for students attending the charter school.

The amount of transfer is dependent on the district and the number of students attending the charter school.

(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?

Unknown. Any cost saving will be because the school district is serving less students. The extent is determined by the number of former district students attending the charter school. A loss of attendance will also result in a loss of funding for the district's non-charter schools.

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

Unknown. Any cost saving will be because the school district is serving less students. The extent is determined by the number of former district students attending the charter school. A loss of attendance will also result in a loss of funding for the district's non-charter schools.

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

Unknown.

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

Unknown.

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:

Pursuant to KRS 160.1596 and this regulation, school districts serving as a district of location for a public charter school are required to transfer funds to a charter school on a proportionate per pupil basis. The amount of funds will depend on the number of students attending the charter school and the amount of state and local funding received by the district. This will vary by district. A district that loses students to a charter school will see a cost savings related to no longer serving those students. Correspondingly, the district will lose the revenue generated by the lost students. The costs savings to lost revenue may not be equal.

(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 regulation will have a major economic impact on school districts serving as districts of location for charter schools. KRS 160.1593 requires charter school applications to contain a plan for recruiting one hundred (100) students. A 100-student charter school will result in a district of location having to transfer an estimated \$500,000 to \$1,000,000,000 or more in funding to the charter. The exact amount will depend on the specific district and number of students enrolled in the charter school. Districts will realize some savings in no longer having to provide educational services to students that leave the district to attend the charter school. It is unknown whether the loss of revenue equals the reduction in costs when a district's former student attends a charter school.