

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Amendments to 704 KAR 3:095, The Use of Response-to-Intervention in Kindergarten through Grade 3

Date: December 2023

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board State Schools United We Learn

SUMMARY OF ISSUE BEFORE THE BOARD:

To take action on proposed amendments to 704 KAR 3:095 required due to the passage of Senate Bill (SB) 9 (2022), which amended KRS 158.305(2) to state the following:

“Kentucky Board of Education (KBE) shall promulgate administrative regulations to further define a multitiered system (MTSS) of supports for district-wide use of a system for students in kindergarten through grade three, that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to evidence-based research and matched to individual student strengths and needs.”

Therefore, 704 KAR 3:095 has been amended to align to KRS 158.305(2) in addition to addressing the varying needs of all learners in Kentucky. The proposed regulatory amendments include provisions for implementation of a district MTSS that provides a tiered instructional delivery system with a continuum of differentiated Tier 1 universal, Tier 2 targeted, and Tier 3 intensive intervention that address the academic and behavioral needs of individual students in K-12.

Regulatory amendments also provide alignment to KRS 158.6459, KRS 156.488 and KRS 158.791 which require the Kentucky Department of Education to provide the following:

- Support schools and school districts in developing accelerated learning opportunities to address academic deficiencies of high school students prior to graduation.
- Develop enhanced courses for students in grades 6, 9, 10, 11 and 12 who are academically behind.
- Provide support to school districts in developing teaching strategies that address academic deficiencies of students.

COMMISSIONER’S RECOMMENDATION:

The commissioner recommends the board approve amendments to 704 KAR 3:095.

APPLICABLE STATUTE OR REGULATION:

KRS 158.305(2), 156.070, 156.160, 158.6459, 156.488 158.791 and 704 KAR 3:095

BACKGROUND:

Existing Policy:

Current language in 704 KAR 3:095 reflects the provisions in place for KRS 158.305(2) prior to the passage of SB 9 which required the KBE to “promulgate administrative regulations for the

district-wide use of a response-to-intervention system for students in Kindergarten through Grade 3.” However, once SB 9 was passed during the 2022 legislative session, KRS 158.305(2) was amended to state the following:

“Notwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations to further define a multitiered system of supports for district-wide use of a system for students in kindergarten through grade three (3), that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to evidence-based research and matched to individual student strengths and needs.”

As a result, 704 KAR 3:095 has been amended to remove language associated with response to intervention programs and incorporates new language for a district MTSS that defines a tiered continuum of instruction based on universal screening and diagnostic assessments to determine evidence-based interventions that best maximize students’ academic and behavioral outcomes as to meet the expectations provided under KRS 158.645 and 158.6451.

Additionally, regulatory amendments provide language extending MTSS services to students in K-12 to more closely align to KRS 158.6459, 156.488, and 158.791, which require schools and districts to support accelerated learning opportunities and teaching strategies to address outcomes for middle and high school students prior to high school graduation.

Summary of Issue:

Currently, 704 KAR 3:095 does not meet the new requirements of KRS 158.305(2) passed under SB 9 as it contains language for a district response to intervention program. Regulatory amendments are needed in order to further define a tiered continuum of interventions, with varying levels of intensity and duration in order to support K-12 students needing accelerated learning opportunities in order to reach proficiency.

Therefore, 704 KAR 3:095 has been amended to provide requirements for a district MTSS that includes a tiered instructional delivery system with differentiated Tier 1 universal, Tier 2 targeted, and Tier 3 intensive intervention that address the academic and behavioral needs of individual students in K-12. Amendments also include provisions for districts in using universal screening and diagnostic assessments, evidence-based strategies for instruction and intervention, and expectations for utilizing data to regularly monitor progress.

Under the proposed regulatory amendments, schools ensure implementation of the districtwide MTSS with a continuum of academic, behavioral and social-emotional supports. Schools are responsible for utilizing data to monitor progress and provide reports to parents summarizing student progress.

The KDE’s Office of Teaching and Learning (OTL) and the MTSS cross-agency team will provide staffing, training and resources to support the MTSS implementation efforts in local schools and districts to ensure the requirements of 704 KAR 3:095 are met with fidelity.

Budget Impact:

The OTL has staffing, materials and resources in place to support schools and districts in implementing 704 KAR 3:095. Therefore, the OTL does not anticipate added costs to the KDE.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

The Office of Continuous Improvement and Support and the Office of Special Education and Early Learning were consulted and provided feedback on the drafting of the proposed amendments to 704 KAR 3:095 to ensure cross-agency alignment in supporting academic and behavioral needs of all Kentucky students.

The regulation will go before the School Curriculum, Assessment and Accountability Council (SCAAC) for discussion at its November 2023 meeting.

The regulation will go before the Local Superintendents Advisory Council (LSAC) at its November 30, 2023 meeting. A summary of the feedback received by the council will be provided to the KBE prior to its December 2023 meeting.

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Category: <input type="checkbox"/> Educator Workforce Diversity <input type="checkbox"/> Portrait of a Graduate Partnerships <input checked="" type="checkbox"/> Racial Equity Commitment <input checked="" type="checkbox"/> Student-Centered Accountability System <input type="checkbox"/> Early Childhood <input checked="" type="checkbox"/> District Support
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