

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 704 KAR 3:535. Full-time enrolled online, virtual and remote learning programs.

6 RELATES TO: KRS 156.070, 156.160, 158.070, 158.1413, 158.4416, 158.6451, 160.345,

7 160.380

8 STATUTORY AUTHORITY: KRS 156.070, 156.160

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board
10 of Education to have management and control of programs operated in the common schools.

11 KRS 156.160 requires the Kentucky Board of Education to promulgate administrative
12 regulations establishing standards which school districts shall meet in program service to
13 students. This administrative regulation establishes minimum requirements for the operation of
14 full-time enrolled online, virtual and remote learning programs in school districts for grades K-
15 [~~Kindergarten through grade~~]¹².

16 Section 1. Definitions. (1) “Accountable School” is defined by 703 KAR 5:240, Section 1(1).

17 (2) “Alternative Education Program” is defined by KRS 160.380(1)(b).

18 (3) ~~{(1)}~~ "Asynchronous learning" means forms of education, instruction, and learning that do
19 not require interaction with others to occur at the same time through a variety of strategies and
20 tools.

21 (4) ~~{(2)}~~ "Child with a disability" is defined by 707 KAR 1:002, Section 1(9).

1 (5) ~~[(3)]~~ "Full-Time Enrolled Online, Virtual and Remote Learning Program" means a public
2 school district program that enrolls K-12 students on a full-time basis, where teachers and
3 students are not in the same physical location and all or most of the instruction is provided online
4 through a combination of synchronous and asynchronous learning strategies. A full-time enrolled
5 online, virtual and remote learning program shall not be classified as an alternative education
6 program as set forth in 704 KAR 19:002.

7 (6) ~~[(4)]~~ "Individual education program" or "IEP" is defined by 707 KAR 1:002, Section 1(34).

8 (7) ~~[(5)]~~ "Individual learning plan" or "ILP" is defined by 704 KAR 19:002, Section 1(6).

9 (8) ~~[(6)]~~ "Synchronous learning" means forms of education, instruction, and learning that occur
10 at the same time through a variety of strategies and tools.

11 (9) ~~[(7)]~~ "Virtual and Performance-Based" means course setup and attendance verification
12 pursuant to 702 KAR 7:125, Section ~~[(11)]~~(4)(g) and 704 KAR 3:305 Section ~~6[(17)]~~.

13 ~~[Performance-Based virtual students included in the exception set forth at 702 KAR~~
14 ~~7:125(1)(4)(g) shall not be covered by this administrative regulation.]~~

15 (10) ~~[(8)]~~ "Voluntary placement" means the placement of a student in an online, virtual and
16 remote learning program at the request of the parent or emancipated student and with the
17 approval of the school district to:

18 (a) Ensure the health and safety of the individual student including the social, emotional, and
19 mental health needs of the student ~~[learner]~~; and

20 (b) Meet the educational needs of the student.

21 Section 2. Program Requirements. (1) For any full-time enrolled online, virtual and remote
22 program it operates, school districts shall ensure that:

- 1 (a) All of the education services and requirements as a physical school to fully support the
2 academic, social, emotional, and mental health needs of students [~~the learner~~] are provided;
- 3 (b) The online, virtual and remote learning program meets the requirements set forth in 704 KAR
4 3:305;
- 5 (c) The online, virtual and remote learning program is aligned to the academic and curricular
6 requirements of the district; and
- 7 (d) A student enrolled in a full-time enrolled online, virtual and remote learning program shall be
8 eligible to participate in one (1) or more types of programs to address student learning needs,
9 which shall include credit acceleration, credit accumulation, and an innovative path to
10 graduation.
- 11 (2) Each local board of education shall adopt and annually review policies and procedures for the
12 operation of each full-time enrolled online, virtual and remote learning program within the
13 district. Locally-adopted policies and procedures shall include:
- 14 (a) The purpose of the program, including the ways the program supports the district's
15 postsecondary readiness goals for students;
- 16 (b) Locally defined eligibility criteria, as appropriate;
- 17 (c) Procedures for enrolling students in the program, including procedures to ensure voluntary
18 placement;
- 19 (d) Procedures for transitioning students out of the program;
- 20 (e) Procedures for regular, periodic monitoring of the program by the district;
- 21 (f) [(e)] Procedures for the development and implementation of student ILPs as required by 704
22 KAR 3:305; and

- 1 (g) ~~(f)~~ Implementation of an application and on-boarding process to ensure students and
2 families understand the expectations for students in a full-time enrolled online, virtual and
3 remote learning program and a determination of candidacy.
- 4 (3) Only students with determined appropriate digital access and support beyond the school
5 campus shall be candidates for the full-time enrolled online, virtual and remote learning
6 program. ~~[virtual school, program, or academy.]~~ The district shall ensure all students enrolled in
7 the [a virtual school,] program [, or academy] have appropriate digital access to fully participate
8 ~~[in and access the online, virtual and remote learning program].~~
- 9 (4) Full-time enrolled online, virtual and remote learning program curriculum shall be aligned
10 with the Kentucky Academic Standards established in ~~[704 KAR 3:303,]~~ 704 KAR Chapter 8~~[,]~~
11 and the student learning goals in the ILP.
- 12 (5) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall
13 be subject to the minimum graduation requirements established in 704 KAR 3:305 and any
14 additional local district graduation requirements.
- 15 (6) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall
16 participate in the state-required assessment program and be included in the state accountability
17 system as set forth in 703 KAR Chapter 5.
- 18 (7) A full-time enrolled online, virtual and remote learning program shall be subject to all
19 applicable requirements of 703 KAR 5:225 and Kentucky's Consolidated State Plan
20 implementing the Elementary and Secondary Education Act of 1965 as amended by the Every
21 Student Succeeds Act of 2015, or its successor.

1 (8) Each student participating in a full-time enrolled online, virtual and remote learning program
2 shall be eligible to access extracurricular activities and programs as allowed by local district and
3 school council policies and by 702 KAR 7:065 or other applicable organization rules.

4 (9) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall
5 have access to instructional and support resources and services available to other students in the
6 district, which shall include instructional materials, tutoring, intervention, and counseling
7 services, in furtherance of each student's educational program as determined through the
8 development of the ILP.

9 (10) The school district shall document each student enrolled in a full-time enrolled online,
10 virtual and remote learning program as non-transported in the state student information system
11 for transportation funding purposes.

12 Section 3. Placement of Students. (1) Enrollment of any student in a full-time enrolled online,
13 virtual and remote learning program shall be a voluntary placement.

14 (2) A student entering a full-time enrolled ~~an~~ online, virtual and remote learning program shall
15 meet the eligibility requirements for the program established by the local board pursuant to
16 Section 2 of this administrative regulation.

17 (3) Voluntary placement of a child with a disability in a full-time enrolled online, virtual and
18 remote learning program shall be made through the Admissions and Release Committee (ARC)
19 pursuant to 707 KAR 1:320. The ARC shall document the student's voluntary placement in the
20 full-time enrolled online, virtual, and remote learning program in the ARC Conference Summary.

21 (a) The voluntary placement decisions for a student who has been identified under 29 U.S.C.
22 §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team
23 process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

1 (b) The district shall fully implement any accommodation required by 29 U.S.C. §794, Section
2 504 of the Rehabilitation Act of 1973, as amended and any IEP for a child with a disability in a
3 full-time enrolled online, virtual and remote learning program. The district shall ensure the
4 Section 504 Team and Admissions and Release Committee (ARC) was involved in determining
5 how all special education, related services, and accommodations shall be implemented for a child
6 with a disability in the ~~[full-time enrolled online, virtual and remote learning]~~ program.

7 Section 4. Costs and Expenditures. Each district shall use the statewide financial management
8 system and chart of accounts to track costs and expenditures associated with each full-time
9 enrolled online, virtual and remote learning program operating in the district.

10 Section 5. Data. (1) Each district shall utilize the student information system to enter data
11 regarding each student in a full-time enrolled online, virtual and remote learning program.

12 (2) Data collected shall include demographic, programmatic, or other data fields contained in the
13 student information system or required by the department to track and report student enrollment,
14 educational programming, achievement, and transition to and from enrollment in the full-time
15 enrolled online, virtual and remote learning programs. Beginning with the 2025-2026 school
16 year, each student in a full-time enrolled online, virtual and remote learning program shall be
17 enrolled in an accountable school in the state student information system.

18 Section 6. Personnel. (1) Full-time enrolled online, virtual and remote learning program teachers
19 and administrators shall be:

20 (a) Subject ~~[subject]~~ to the teacher certification requirements established in KRS 161.020; [,]

21 (b) Subject to ~~[and shall comply with]~~ the classified and certified assignment restrictions
22 established in KRS 160.380; and ~~[(3)]~~.

1 (c) Employed pursuant to an employee contract with a Kentucky public school district for no less
2 than 185 days and paid pursuant to a single salary schedule as established in KRS 157.350(1) and
3 (3).

4 (2) The district shall ensure a system of high-quality professional learning on the high-quality
5 instructional resources and on evidence-based instructional practices for virtual learning.

6 Section 7. Class Size. Full-time enrolled online, virtual and remote learning programs shall meet
7 the requirements set forth in KRS 157.360 and 702 KAR 3:190 for maximum class sizes and
8 exemptions thereto.

9 Section 8. Student Attendance. (1) Students in a full-time enrolled online, virtual and remote
10 learning program authorized by this regulation shall be counted in attendance.

11 (2) Attendance for students in a full-time enrolled online, virtual and remote learning program
12 authorized by this regulation shall be collected as follows:

13 (a) Attendance shall be recorded at the course level for ~~[virtual]~~ middle and high school students
14 by certified teachers;

15 (b) Attendance shall be recorded at least two (2) times each school day for ~~[virtual]~~ elementary
16 school students with checks three (3) hours apart by certified teachers;

17 (c) Attendance for each course shall be recorded in the student information system attendance
18 tables;

19 (d) Courses shall not be set up as virtual and performance-based;

20 (e) Attendance clerks or other assigned district personnel shall reconcile attendance for each
21 course or period to ensure proper codes are entered for absent students. Attendance event
22 absence codes shall be entered at the office level (for example, doctor excuses or parent
23 excuses); and

1 (f) District attendance records for full-time enrolled online, virtual and remote learning programs
2 ~~[program attendance records]~~ shall be subject to audit by the Kentucky Department of Education.

3 (3) Students in a full-time enrolled online, virtual and remote learning program shall be subject
4 to the compulsory attendance laws set forth in KRS Chapter 159. ~~[159.150 and 159.180.]~~ School
5 districts operating a full-time enrolled online, virtual and remote learning program shall develop
6 and implement policies to address attendance absences, which shall include:

- 7 (a) The attendance status of students with an internet outage;
- 8 (b) The process to return students to in-person instruction for truancy violations; and
- 9 (c) The district process for actions it shall take pursuant to KRS Chapter 159 for truant students.

10 Section 9. Curriculum, Content, and Instruction. (1) The full-time enrolled online, virtual and
11 remote learning program shall provide instruction aligned to the grade-level expectations
12 established in the Kentucky Academic Standards in ~~[at 704 KAR 3:303 and]~~ 704 KAR Chapter
13 8, including the selection, vetting, and implementation of high-quality instructional resources
14 aligned to the Kentucky Academic Standards and grade-level appropriate assignments. Districts
15 shall maintain evidence of having systemic formative assessment processes in place to:

- 16 (a) Accurately measure student progress on grade-level standards for students enrolled in a full-
17 time enrolled online, virtual and remote learning program; and
- 18 (b) Support students enrolled in the full-time enrolled online, virtual and remote learning
19 program needing accelerated learning on grade-level standards within universal instruction as
20 well as those students who need more targeted interventions and supports.

21 (2) The full-time enrolled online, virtual and remote learning program shall implement
22 synchronous learning strategies and digital platforms for two-way visual and verbal interactions.
23 Additionally, the full-time enrolled online, virtual and remote learning program shall utilize a

1 learning management system ~~[(LMS)]~~ or other digital platforms that allows teachers to monitor
2 student's progress, interactions and engagement with the teacher, and other students online for
3 the review of student work and completion of assignments through both synchronous and
4 asynchronous interactions.

5 (3) Students in a full-time enrolled online, virtual and remote learning program shall be assigned
6 a schedule that aligns with the standard day of in-person students. Virtual student schedules shall
7 adhere to the standard day and hour requirements set forth at KRS 158.070.

8 (4) The full-time enrolled online, virtual and remote learning program shall ensure attainment of
9 the declarations and goals set forth by KRS 158.6451.

10 (5) Students in the full-time enrolled online, virtual and remote learning program shall receive
11 access to the essential workplace ethics programs, including characteristics critical to success in
12 the workplace, as established in KRS 158.1413.

13 Section 10. Virtual and Performance-Based Students. (1) Students with courses utilizing virtual
14 and performance-based course set up and attendance verification pursuant to 702 KAR 7:125,
15 Section 1(4)(g) and 704 KAR 3:305, Section 7 may be enrolled in the full-time enrolled online,
16 virtual and remote learning program but shall not be covered by this administrative regulation.

17 (49 Ky.R. 699, 1260; eff. 3-7-2023.)

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)

Dr. Robbie Fletcher
Commissioner of Education

(Date)

Sharon Porter Robinson, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this proposed administrative regulation shall be held XX, 2024 at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays 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 cancelled. 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 through XX, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

704 KAR 3:535

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of online, virtual and remote learning programs in school districts.

(b) The necessity of this administrative regulation: This regulation ensures Kentucky's public school districts have the ability to create high-quality full-time enrolled online, virtual and remote learning opportunities for students.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070 and 156.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Districts may utilize the funding mechanism and program standards established in this regulation to support a full-time enrolled online, virtual and remote learning program.

(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: Amendments to 704 KAR 3:535 are being made to:

- To ensure students in these programs and through this specific funding mechanism are appropriately included in the accountability system,
- To provide clarifications around teachers and administrators of full-time enrolled online, virtual and remote learning programs,
- To provide a point of emphasis regarding the adoption and annual review of policies and procedures regarding periodic monitoring by the district, and
- To make minor technical corrections.

(b) The necessity of the amendment to this administrative regulation: The primary purpose of the amendment is to align language in 704 KAR 3:535 with 703 KAR 5:240, Accountability administrative procedures and guidelines.

(c) How the amendment conforms to the content of the authorizing statute: The regulation continues to conform to the authority given to the Kentucky Board of Education in KRS 156.070 and 156.160.

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

This amended regulation ensures Kentucky's public school districts have the ability to create high-quality full-time enrolled online, virtual and remote learning opportunities for students while also ensuring the students in these programs and through this specific funding mechanism are appropriately included in the accountability system as well as providing a point of emphasis regarding the adoption and annual review of policies and procedures regarding periodic monitoring by the district.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this administrative regulation include: All Kentucky public school district-created full-time enrolled online, virtual and remote learning programs for K-12 students and the Kentucky Department of Education (KDE).

(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:

The establishment of a full-time enrolled online, virtual and remote learning program will be voluntary. Thus, action will only be necessary for those Kentucky public school districts seeking to establish this program. For those districts, the following actions will be taken: Students in these programs will need to be primarily enrolled in an accountable school and each local board of education shall adopt and annually review policies and procedures for the operation of each full-time enrolled online, virtual and remote learning program within the district.

Locally-adopted policies and procedures shall include:

(a) The purpose of the program, including the ways the program supports the district's postsecondary readiness goals for students;

(b) Locally defined eligibility criteria, as appropriate;

(c) Procedures for enrolling students in the program, including procedures to ensure voluntary placement;

(d) Procedures for transitioning students out of the program;

(e) Procedures for regular, periodic monitoring of the program by the district;

(f) Procedures for the development and implementation of student ILPs as required by 704 KAR 3:305; and

(g) Implementation of an application and on-boarding process to ensure students and families understand the expectations for students in a full-time enrolled online, virtual and remote learning program and a determination of candidacy.

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

There should be little to no additional costs for public school districts to comply with this administrative regulation. The Kentucky Department of Education will be impacted by staff time to provide guidance and support.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the amended administrative regulation will ensure students are appropriately included in the accountability system and provides a point of emphasis regarding the adoption and annual review of policies and procedures regarding periodic monitoring by the district.

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

(a) Initially: Public school districts choosing to establish a full-time enrolled online, virtual and

remote learning program should incur little to no added expense to implement the requirements of this regulation. The KDE will incur no new additional costs to implement this regulation.

(b) On a continuing basis: Public school districts may incur additional costs in support of the established program but are dependent on locally controlled decisions. The KDE incurs an ongoing cost of staff and resources that are already in place. The cost of these resources could be affected in the future by program growth and supports needed to maintain high-quality opportunities for students.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation is funded by the KDE General Fund.

(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: This regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish any fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering was not appropriate as the administrative regulation applies equally to all schools and districts.

FISCAL IMPACT STATEMENT

704 KAR 3:535

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 156.070, KRS 156.160

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Education, Kentucky Department of Education.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated; may include staff time to provide guidance to local districts for implementation.

Revenues: No revenue. However, a district offering this program could see new revenue from net new enrollment (for example, homeschooled students that were previously unenrolled in the district).

Cost Savings: No additional cost savings are expected to be generated by this amended regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No additional expenditures, revenues, or cost savings are anticipated in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): School Districts

(a) Estimate the following for the first year:

Expenditures: Public school district and Kentucky Department of Education staff time may be impacted by the need for implementation, guidance, and general support.

Revenues: No additional revenue is anticipated by this amended regulation.

Cost Savings: No additional cost savings are expected by this amended regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No additional expenditures, revenues, or cost savings are anticipated in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): No additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: Not applicable as no additional regulated entities have been identified.

Revenues: Not applicable as no additional regulated entities have been identified.

Cost Savings: Not applicable as no additional regulated entities have been identified.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Not applicable as no additional regulated entities have been identified.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this regulation is expected to be neutral, as no additional cost will be incurred. This regulation is designed to facilitate district options for full-time online, virtual and remote learning programs.

(b) Methodology and resources used to determine the fiscal impact:

The amended regulation does not establish any new mandatory requirements for all school districts. It does, however, establish a new enrollment requirement for districts who choose to establish these programs. Beyond establishing initial policies and procedures, no additional fiscal impact is anticipated.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)
This administrative regulation is not anticipated to have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

Based on the assessment of the agency, this regulation alone will not have a major economic impact on state or local regulated entities. The regulation is aimed at establishing the minimum requirements for the operation of full-time enrolled online, virtual and remote learning programs. The Commonwealth spends well over \$500,000 providing public education to elementary and secondary education students each year. However, those expenses would continue to exist absent this administrative regulation.