

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 701 KAR 5:150. Nontraditional instruction program.

6 RELATES TO: KRS 158.070

7 STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.160, 158.070

8 CERTIFICATION STATEMENT:

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(~~7~~ 9) requires the Kentucky
10 Board of Education (KBE) to adopt policies and administrative regulations by which the
11 Kentucky Department of Education (department) shall be governed in planning and operating
12 programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation
13 of the Commissioner of Education (Commissioner), to establish policy or act on all programs,
14 services, and other matters which are within the administrative responsibility of the
15 department. KRS 158.070 requires the KBE to promulgate an administrative regulation to
16 prescribe the conditions and procedures for local education agencies (districts) to be approved
17 for the nontraditional instruction program. This administrative regulation establishes the
18 requirements and approval process for districts to be approved for the nontraditional instruction
19 program.

20 Section 1. Definitions. (1) "Comprehensive District Improvement Plan" shall have the same
21 meaning as defined in 703 KAR 5:225, Section 1(3).

1 **(2) “Continuation of learning” means the provision of rigorous educational activities**
2 **that extend or maintain progress within the established curriculum and instructional**
3 **sequence.**

4 **(3)**~~[(2)]~~ "Instructional delivery method" means the delivery system and instructional techniques
5 used in meeting the learning needs of students regardless of their physical location.

6 **(4) “Learning loss” means a measurable decline or stagnation in student academic**
7 **performance resulting from short-term interruptions to traditional, in-person instruction.**

8 **(5)**~~[(3)]~~ "Minimum school term" or "school term" is defined in KRS 158.070(1)(b).

9 **(6)**~~[(4)]~~ "Nontraditional instruction day" means a day during the school term that a local school
10 district is closed for health or safety reasons that is approved by the commissioner, pursuant to
11 KRS 158.070(9), to be the equivalent to a student attendance day.

12 **(7)**~~[(5)]~~ "Nontraditional instruction plan" means the strategy approved by the commissioner and
13 implemented by a local school district to ensure instruction on nontraditional instruction days is
14 a continuation of learning that is occurring on regular student attendance days as required by
15 KRS 158.070(9).

16 **(8) “District Nontraditional Instruction Contact” means the designated individual**
17 **responsible for overseeing the implementation, coordination, and compliance of**
18 **nontraditional instruction activities within a school district.**

19 **(9)**~~[(6)]~~ "Professional learning plan" means the strategy implemented to ensure staff in a local
20 school district acquire, enhance, and refine the knowledge, skills, practices, and dispositions
21 necessary to create and support high levels of learning for all students.

22 **(10)**~~[(7)]~~ "Student attendance day" is defined in KRS 158.070(1)(e).

1 Section 2. Nontraditional Instruction Plan. (1) A district seeking commissioner approval,
2 pursuant to KRS 158.070, of a nontraditional instruction plan shall annually incorporate it within
3 the Comprehensive District Improvement Plan.

4 (2) A nontraditional instruction plan incorporated within the Comprehensive District
5 Improvement Plan shall:

6 (a) Provide an overview of the district's vision for ensuring a continuation of learning when
7 implementing nontraditional instruction;

8 (b) Describe in detail:

9 1. How instruction shall be delivered for students in nontraditional settings;

10 2. The steps the district shall take to ensure a continuation of learning occurs for students in
11 nontraditional settings;

12 3. How, if at all and to the extent permitted by applicable statutes and administrative
13 regulations, the district shall ensure a continuation of learning occurs for those students
14 utilizing, for any reason, nontraditional instruction during time periods when the district may be
15 offering and providing in-person instruction to other students;

16 4. How the district shall ensure a continuation of learning for students with Individual Education
17 Plans in nontraditional settings;

18 5. Additional efforts that may be necessary to ensure a continuation of learning for other
19 special populations of students in nontraditional settings;

20 6. How the district has coordinated or will coordinate with other educational entities to ensure a
21 continuation of learning for students in nontraditional settings;

22 7. How teachers shall instruct, support, and communicate with students in order to ensure
23 academic progress as well as promote social and emotional well-being for students in
24 nontraditional settings;

8. The professional learning activities the district shall provide certified staff to ensure they have the skills necessary to provide a continuation of learning for students in nontraditional settings;

9. How the district shall deploy all staff when school is closed to in-person instruction;

10. The partnerships the district has established with other community agencies to increase opportunities for a continuation of learning for students in nontraditional settings; ~~and~~

11. The district's communication plan for parents, students, and community members for students in nontraditional settings;

12. The district's plan for collecting and archiving the evidence of student learning samples required by section 3(3) of this regulation; and

13. The name and contact information for the districts nontraditional instruction contact.

(c) Explain how the nontraditional instruction plan relates to district goals; and

(d) Provide other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.

(3) The department shall provide technical assistance, upon request, to districts prior to the incorporation of a nontraditional instruction plan within the Comprehensive District Improvement Plan.

(4) A district shall submit the nontraditional instruction plan to the department by May 1 for implementation at the beginning of the upcoming school term.

(5) The commissioner or his designee shall review and approve or deny a completed nontraditional instruction plan within forty-five (45) days from receipt.

(6) An approved nontraditional instruction plan shall be effective only for one school year.

1 ~~[(6)]~~ **(7)** (a) A district approved to participate in the nontraditional instruction program may
2 amend its nontraditional instruction plan as needed at any time by submitting a written
3 amendment request to the department.

4 (b) The amendment request shall contain a description of the amendment, proposed timeline
5 for implementation, and justification for the request.

6 (c) The Commissioner or his designee shall review the amended nontraditional instruction plan
7 and approve or deny it within forty-five (45) days of the amendment submission.

8 **(d) Amendments made to a district approved plan shall not be implemented until after**
9 **the amendment is approved by the department.**

10 Section 3. **Documentation** ~~[Use]~~ of Nontraditional Instruction Days. (1) **Upon approval of a**
11 **district's nontraditional instruction plan,** ~~[If a district is approved by the commissioner or his~~
12 ~~designee to participate in the nontraditional instruction program, the district may apply for and]~~
13 the commissioner may approve the use of nontraditional instruction days on days when the
14 district is closed for health or safety reasons pursuant to KRS 158.070.

15 ~~[(2) The district shall seek approval from the commissioner to use one (1) or more~~
16 ~~nontraditional instruction days by submitting a request and appropriate supplemental~~
17 ~~documentation, as required by the department, to the department within thirty (30) days~~
18 ~~following the day the district was closed for health or safety reasons.]~~

19 **(2) An approved nontraditional instruction plan grants the district the ability to use one**
20 **(1) or more nontraditional instruction days. Each day must be properly recorded in the**
21 **statewide student information system prior to the last day of the school year.** ~~[(3) The~~
22 ~~commissioner shall approve or deny a district's use of one (1) or more nontraditional instruction~~
23 ~~days within thirty (30) days from receipt of the district's request and appropriate supplemental~~

~~documentation, as required by the department. A request to use one (1) or more nontraditional instruction days shall be denied by the commissioner if the district fails to supply clear~~

(3) Districts shall maintain an archive of clear evidence demonstrating **that** a continuation of learning from regular student attendance days occurs on nontraditional instruction days.

Clear evidence may include:

(a) Examples of student work;

(b) Lesson plans; [or]

~~[(c) Curriculum maps.]~~

(c) Reports from online learning management systems;

(d) Examples of teacher-student communication; or

(e) Other documentation determined appropriate by the district nontraditional

instruction contact in consultation with the Department.

(4) The district archive described in subsection 3 of this section shall include the

following:

(a) For students in Kindergarten through Fifth Grade, one piece of clear evidence of student learning for each grade level for reading, math, and one other content area for each nontraditional instruction day; and

(b) For students in sixth through twelfth grade, one piece of clear evidence of student learning for each grade level in each content area for each nontraditional instructional day.

Section 4. Monitoring ~~[and Revocation]~~ of Nontraditional Instruction Programs. (1) At the conclusion of each school term, a district ~~[approved by the commissioner or his designee to participate in the nontraditional instruction program]~~ may **be required to participate in monitoring conducted by** ~~[receive an annual site visit from]~~ a review team selected and

1 trained by the department. The purpose of the **monitoring** ~~[site visit]~~ is to monitor the district's
2 progress in implementing the approved nontraditional instruction plan. **Monitoring may be**
3 **performed on or off site as determined by the Commissioner or his designee.**

4 (2) If **monitoring** ~~[a site visit]~~ is conducted by the department, **it** ~~[the site visit]~~ shall:

5 (a) Be made following adequate advanced notice to the district; and

6 (b) Include the gathering of information through the examination of records related to the
7 district's implementation of the approved nontraditional instruction plan, including amendments
8 if applicable, and through interviews with district leadership, staff, and students as well as other
9 stakeholders.

10 (3) In addition to any **monitoring** ~~[site visit]~~ that may be conducted pursuant to subsections (1)
11 and (2) of this section, a district ~~[approved by the commissioner or his designee to participate~~
12 ~~in the nontraditional instruction program]~~ shall, upon request, make the following available for
13 inspection by the department:

14 (a) Documentation of the instructional delivery methods used on nontraditional instruction
15 days;

16 (b) Evidence demonstrating the district provides access on nontraditional instruction days to
17 online resources, if used, and equitable instructional materials for students who do not have
18 access to the internet and for students needing to access information differently;

19 (c) Clear evidence demonstrating a continuation of learning from regular student attendance
20 days occurs on nontraditional instruction days;~~[-Clear evidence may include:~~

21 ~~1. Examples of student work;~~

22 ~~2. Lesson plans; or~~

23 ~~3. Curriculum maps.]~~

- 1 (d) Evidence demonstrating the district ensures implementation of Individual Education
2 Programs for students with disabilities, including the involvement of the Admissions and
3 Release Committee in planning for and making decisions related to the participation and needs
4 of students with disabilities, on nontraditional instruction days;
- 5 (e) Evidence demonstrating the district ensures implementation of other student-specific
6 educational plans, including Program Service Plans for English Learners and Gifted Student
7 Service Plans for students identified as gifted and talented, on nontraditional instruction days;
- 8 (f) Data demonstrating student participation and student learning on nontraditional instruction
9 days;
- 10 (g) Evidence demonstrating how each job category within the district fulfills contractual
11 obligations on nontraditional instruction days and data, including teacher work logs,
12 demonstrating employee participation on nontraditional instruction days;
- 13 (h) The professional learning plan implemented by the district to ensure certified staff have the
14 knowledge and capacity to provide instruction on nontraditional instruction days and evidence
15 demonstrating implementation;
- 16 (i) Where appropriate, agreements about nontraditional instruction days between the district
17 and educational agencies that are external to the district but have students of the district in
18 attendance on a part-time or full-time basis;
- 19 (j) Evidence demonstrating stakeholder involvement in developing and implementing
20 nontraditional instruction days;
- 21 (k) Methods used by the district to relay information about nontraditional instruction days to
22 students and families; and
- 23 (l) Other evidence deemed necessary by the department to effectively monitor the
24 implementation of the approved nontraditional instruction plan, including amendments if

applicable.

Section 5. Corrective Action

(1) [(4)] The commissioner or his designee may **require a period of corrective action and enhanced monitoring** ~~[revoke approval]~~ of a district's nontraditional instruction program as a result of evidence collected pursuant to ~~[this]~~ **monitoring conducted under** section **4 of this regulation**.

(2) [(5)] **If the determination to require corrective action was made as the result of off-site monitoring, the district** ~~[Prior to having approval of its nontraditional instruction program revoked, a district]~~ shall receive a site visit from a review team selected and trained by the department. **The site visit shall include the same requirements as the on-site monitoring visit in section 4.** ~~[The purpose of the visit shall be to monitor the district's progress in implementing the nontraditional instruction program, collect qualitative data on the effectiveness of the nontraditional instruction program, and verify the district's compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through:~~

~~(a) Direct observation;~~

~~(b) Interviews with staff and students; or~~

~~(c) Examination of records.]~~

(3) Following the on-site monitoring, the Department will develop a corrective action plan in collaboration with the district. The corrective action plan shall include:

(a) A description of each area of noncompliance identified by the monitoring team and the supporting evidence used to identify the area of noncompliance;

(b) Specific actions to be taken by the district to remedy issues of noncompliance; and

(c) A timeline for the completion of the specific actions required in paragraph (b) above.

1 **(4) A district shall be released from corrective action following the successful**
2 **completion of the corrective action plan.**

3 **(5) A district that has exited corrective action shall undergo an on-site monitoring visit**
4 **in the school year following the completion of the corrective action plan to ensure that**
5 **compliance has been sustained.**

6 (45 Ky.R. 1468, 2329; eff. 3-8-2019; 47 Ky.R. 1061, 1554; eff. 5-4-2021.)

APPROVED: Date

NAME, Title

NAME, Title

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on {Month ##, 2025}, at {time}, at {location of the meeting}. 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 was received by that date, the hearing may be cancelled. 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 {Month ##, 2025}. 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: {Name, position, mailing address, phone number, fax number, and e-mail address, for the contact person}.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

701 KAR 5:150

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

Subject Headings: “Board of Education”; “Schools”; “Compliance”

(1) Provide a brief summary of:

(a) What this administrative regulation does: The amendments to this regulation provide clarity and increased rigor to the non-traditional instruction (NTI) program.

(b) The necessity of this administrative regulation: These amendments are necessary to ensure that the non-traditional instruction (NTI) program remains appropriately rigorous given technological advancements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 158.070(9) which creates the non-traditional instruction (NTI) program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendments will assist with the effective administration of the statutes by increasing the requirements for rigorous instruction during periods of non-traditional instruction (NTI).

(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: This amendment formally creates a district level non-traditional instruction (NTI) contact, creates a more rigorous artifact collection process to ensure learning is happening during periods of non-traditional instruction (NTI), and clarifies the KDE’s role in monitoring and issuing corrective action related to the non-traditional instruction (NTI) program.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to ensure that the non-traditional instruction (NTI) program remains rigorous and adapts to changing technology.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 158.070(9) by ensuring that the minimum qualifications for non-traditional

instruction (NTI) are met.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist with the effective administration of the statutes by increasing the requirements for rigorous instruction during periods of non-traditional instruction (NTI).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Education, Local Education Agencies.

(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: Each local education agency will be required to identify a non-traditional instruction (NTI) point of contact and maintain a more rigorous data collection process. The KDE will be required to perform enhanced monitoring.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new expenditures associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The students of the Commonwealth will experience more rigorous instruction during periods of non-traditional instruction (NTI).

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

(a) Initially: There are no new expenditures associated with this regulation.

(b) On a continuing basis: There are no new expenditures associated with this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of the non-traditional instruction (NTI) program is managed at the local level.

(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 does not include fees.

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

(9) TIERING: Is tiering applied? Tiering is not applied as there are no expenditures related to this regulation.

FISCAL IMPACT STATEMENT

701 KAR 5:150

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 158.070(9)

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: This regulation is required by KRS 158.070(9).

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

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: There are no expenditures related to this regulation.

For subsequent years: There are no expenditures related to this regulation.

2. Revenues:

For the first year: There are no revenues related to this regulation.

For subsequent years: There are no revenues related to this regulation.

3. Cost Savings:

For the first year: There are no cost savings related to this regulation.

For subsequent years: There are no cost savings related to this regulation.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local Education Agencies

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: There are no expenditures related to this regulation.

For subsequent years: There are no expenditures related to this regulation.

2. Revenues:

For the first year: There are no revenues related to this regulation.

For subsequent years: There are no revenues related to this regulation.

3. Cost Savings:

For the first year: There are no cost savings related to this regulation.

For subsequent years: There are no cost savings related to this regulation.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): NA

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year: There are no expenditures related to this regulation.

For subsequent years: There are no expenditures related to this regulation.

2. Revenues:

For the first year: There are no revenues related to this regulation.

For subsequent years: There are no revenues related to this regulation.

3. Cost Savings:

For the first year: There are no cost savings related to this regulation.

For subsequent years: There are no cost savings related to this regulation.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: There are no expenditures or revenues related to this regulation.

(b) Methodology and resources used to reach this conclusion: There are no expenditures or revenues related to this regulation.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(13): There are no expenditures or revenues related to this regulation.

(b) The methodology and resources used to reach this conclusion: There are no expenditures or revenues related to this regulation.