

STATEMENT OF CONSIDERATION  
Relating to 702 KAR 5:130

Kentucky Board of Education, Department of Education  
(Amended After Comments)

I. The public hearing on 702 KAR 5:130, scheduled for August 27, 2025, at 10:00 a.m. at the Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky was canceled pursuant to KRS 13A.270(7)(a); however, written comments were received during the public comment period.

II. The following people submitted written comments:

| <u>Name and Title</u>   | <u>Agency/Organization/Entity/Other</u> |
|---|---|
| Justin Kaiser, Superintendent   | Beechwood Independent Schools           |
| Brian Robinson, Superintendent  | Fort Thomas Independent Schools         |
| Joe Buerkley, Superintendent  | Pendleton County Schools                |
| Ashley Munson, Government Relations Manager                           | HopSkipDrive                            |
| Morgan Jude, Senior Director of Compliance,<br>Regulation, and Policy | EverDriven Technologies, LLC            |

III. The following people from the promulgating administrative body responded to the written comments:

| <u>Name and Title</u>   |
|---|
| Matthew T. Ross, Associate Commissioner, Office of Finance and Operations   |
| Lindsey Swartz, Policy Advisor, Office of Finance and Operations  |
| Chay Ritter, Director, Division of District Support, Office of Finance and Operations                             |
| Roger Banks, Manager, Pupil Transportation Branch, Division of District Support, Office of Finance and Operations |

IV. Summary of Comments and Responses

(1) Subject Matter: Scope of Minimum Standards

(a) Comments: Justin Kaiser, Brian Robinson, and Joe Buerkley suggest that the proposed amendments exceed the “minimum standard” in statute, and each provide their own version of what “minimum standard[s]” should be included in the regulation. The first states that the proposed amendments impose bus-level requirements on passenger vans and limit student opportunities in extracurricular activities. The commenter also notes that the regulation should not apply to extracurricular travel and suggests that it creates a new regulatory burden. He further notes that the amendments will result in increased costs and reduced efficiency. The second commenter recommends that the minimum requirements change to school districts being required to maintain an approved list of drivers who: pass all relevant background checks required of all employees who work with students; submit driver’s license for review of any traffic infractions; agree to drug testing following an accident or based on reasonable suspicion; attest that they have no medical condition or currently taking medication that would impair the ability to operate a vehicle; and complete district

training consistent with all employees plus expectations for driving a school van as determined relevant by the school district. The third commenter notes that passenger vans will be treated with the same scrutiny as school buses. The commenter states that the amendments will impact access to extracurricular activities by making non-school bus passenger vehicles more difficult to use. The commenter also notes that an employee with a Class B CDL with passenger and school bus endorsements would be prohibited from driving a school van.

(b) Response: The minimum standards proposed by the commenters do not meet the statutory requirements set forth in KRS 160.380(6)(e). Therefore, adopting the minimum standards recommended by the commenters is not possible. KRS 160.380(6)(e) requires: “The superintendent of a school district operating under an alternative transportation plan approved by the Kentucky Department of Education in accordance with KRS 156.153(3) shall require the driver of any non-school bus passenger vehicle authorized to transport students to and from school pursuant to the alternative transportation plan who does not have a valid commercial driver's license issued in accordance with KRS Chapter 281A with an "S" endorsement to: 1. Submit to a national and state criminal background check by the Department of Kentucky State Police and the Federal Bureau of Investigation at least once every three (3) years and a criminal records check conducted in accordance with KRS 27A.090 in all other years; 2. Submit to drug testing consistent with the requirements of 49 C.F.R. pt. 40; 3. Provide a biannual driving history record check performed by the Transportation Cabinet; 4. Provide an annual clear CA/N check; 5. Immediately notify the superintendent of any conviction for a violation under KRS Chapter 189 for which penalty points are assessed; and 6. Immediately notify the superintendent of any citation or arrest for a violation of any provision of KRS Chapter 189A. The superintendent shall inform the Kentucky Department of Education of the notification.”

Further, KRS 156.153(3)(d) provides language regarding what is required in regulatory minimum standards. “The Kentucky Board of Education shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish: 1. Minimum standards and specifications for non-school bus passenger vehicles used under this subsection, including a standard for minimum insurance coverage; 2. Minimum route safety standards and pick-up and drop-off protocols for pupil transportation using non-school bus passenger vehicles that prohibit non-school bus passenger vehicles from depositing a student at a location that would require the student to cross a road or intersection to reach the student's destination; and 3. Minimum qualifications, training, and drug testing requirements for an individual to be authorized to transport any student to and from school using a non-school bus passenger vehicle. The drug testing requirements shall require an individual to submit to drug testing consistent with the requirements of 49 C.F.R. pt. 40 to be authorized to transport students to and from school using a non-school bus passenger vehicle.”

As for application of the standards set forth in the regulation to transportation for extracurricular activities, KRS 156.153(3)(a) states: “Districts may also use vehicles owned, leased, or contracted by the district that were designed and built by the manufacturer for passenger transportation of nine (9) or fewer passengers, including the driver, for transporting students to and from school and approved school activities under an alternative transportation plan approved by the Kentucky Department of Education.” The statute does not specifically suggest any lessened safety standards for transportation of students for extracurricular activities (i.e. school sponsored events) versus transportation to and from school. Likewise, the agency does not believe it is good policy to create safety standards for extracurricular activity transportation that are less than those required for transportation to and from school. The students depending on school districts for transportation to

and from extracurricular activities are entitled to the same safety standards as those students depending on school districts for transportation to and from school.

Nevertheless, in reviewing these comments the agency considered school district transportation in limited emergency situations and how the minimum transportation standards may impact a school district's ability to respond to the emergency at hand. The agency will amend the regulation to address transportation standards that apply in limited emergency situations.

(2) Subject Matter: Driver Training, Vehicle Inspections, Signage, Fire Extinguishers, and Physical Exams.

(a) Comment: Ashley Munson and Morgan Jude provided comments regarding requirements for contractors operating vehicles to transport students. Munson recommends language to permit a contractor to implement their own driver training program and recommends removing the requirement for ongoing training. Jude comments that the training be offered online. Munson mentions removing the requirement to use the "Non-school Bus Passenger Vehicle Pre-trip Inspection form." Jude recommends vehicle inspections be conducted only twice a year or every ninety days. Munson also requests that the requirements regarding signage be removed from the regulation, as well as the requirement that a fire extinguisher be on board. Munson further recommends drivers only be required to complete a one-time pre-service medical exam.

(b) Response: The proposed regulation amendment does not prohibit a contractor from implementing their own driver training program above and beyond the driver training requirements set forth in the regulation. The agency disagrees that a contractor should not be subject to district specific training. The proposed amendment ensures that both district employees and contractors receive training tailored to the specific needs of the school district. For example, a school district transporting in an urban area may have different needs than a school district transporting in a rural area. The proposed regulation amendment does not prohibit the Kentucky Department of Education developed driver training and the district specific driver training from being offered virtually.

KRS 156.153(3)(b) provides the inspection schedule of non-school bus vehicles. Therefore, the inspection schedule may not be amended by the agency. KRS 156.153(3)(b) states: "Non-school bus passenger vehicles used under this subsection shall be clearly marked as transporting students and undergo a safety inspection no less than once every thirty (30) days. However, non-school bus passenger vehicles that are not for daily use shall not be required to be inspected more frequently than once every three (3) months." The proposed regulation amendment aligns with this statutory requirement. The agency declines to remove the proposed requirement to use the "Non-school Bus Passenger Vehicle Pre-trip Inspection form." This form tells drivers what to inspect on the vehicle to determine whether it is safe to drive. Districts may complete this form electronically.

The agency declines to change the proposed signage requirements. KRS 156.153 requires that "non-school bus passenger vehicles used under this subsection be clearly marked as transporting students[.]" Therefore, the agency may not promulgate a regulation eliminating this signage requirement. The proposed regulatory amendment also adds a requirement for signage with the following: "This vehicle stops at railroad crossings." KRS 189.550 requires operators of motor vehicles used for transporting children to stop at railroad crossings. Since non-school bus passenger vehicles do not typically stop at railroad crossings, this requirement is designed to provide notice to other vehicles to expect railroad crossing stops and avoid rear-end collisions.

KDE declines to change the proposed requirement for non-school bus passenger vehicles to be equipped with fire extinguishers. This requirement promotes student and driver safety in the event of a fire.

KDE declines to change the proposed requirement for driver medical exams. The requirement for a medical exam at least once every twenty-four months ensures that drivers remain medically fit to transport students in non-school bus passenger vehicles.

(3) Subject Matter: Insurance Requirements

(a) Comment: Morgan Jude requests that the regulation be amended to address insurance coverage requirements for subcontractors.

(b) Response: KDE declines to add clarifying language regarding insurance coverage for subcontractors. The proposed regulation amendment addresses insurance coverage for contractors. A subcontractor would be subject to the same insurance coverage requirement as a contractor.

Summary of Statement of Consideration and  
Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was canceled; however, five written comments were received. The agency responded to the comments and amends the administrative regulation as follows:

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Section 9

Line 9

After “made.”, insert the following:

**Section 10. Emergency transportation. (1) If a school district transports a student due to an emergency as determined by the superintendent or his or her designee, Section 3(5), Section 7(2) and (4), and Section 9(1) of this administrative regulation shall not apply. The school district shall attempt to obtain verbal consent of a parent or guardian prior to emergency transportation.**

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Section 10

Line 16

After “Section”, insert “11”.

Delete “10”.