KDE Guidance on Senate Bill 1, 2021 Extraordinary Session

On Sept. 9, 2021, the Kentucky General Assembly passed Senate Bill 1 (SB1), *An act relating to the delivery of education and care for children and declaring an emergency*. SB1 provides supports and flexibilities for schools as they seek to provide the best education possible for Kentucky's students. This guidance document provides important updates to support schools and districts as they implement SB1.

Table of Contents

Mask Requirements

SB1 removes the statewide mask mandates for childcare centers and school facilities. Local boards of education may continue to require mask usage at their discretion. The statewide mask mandates ended effective Sept. 17, 2021.

COVID-19 School Operations Plan

Pursuant to SB1, all Kentucky school districts are required to submit a COVID-19 School Operations Plan to the Kentucky Department of Education (KDE) for informational purposes. The plan also is required to be posted to the district's website. Districts have broad authority to create a local plan as they see fit. There are no required elements or templates. Districts may choose to submit an existing operations plan or create a new plan. Districts should regularly revisit their COVID-19 School Operations Plans and are required to submit any subsequent revisions to KDE. Districts may submit their plans to KDE using this form.

KDE and the Kentucky Department for Public Health (DPH) recommend that districts consider plans to increase vaccination, increase mask use, and enforce quarantine best practices. KDE advises districts to collaborate with their local health departments to align practices when it comes to quarantining and other safety measures and consult with their local board attorneys on the risk associated with not doing so.

Test to Stay

SB1 requires DPH to create a model test to stay policy. Test to stay policies allow students to circumvent quarantine requirements through daily COVID-19 screening. Districts wishing to implement a test to stay model should review the information on the [K-12 School COVID Testing Program](#) webpage and contact their local health departments.

Temporary Assignment to Remote Instruction

Districts may temporarily assign individual schools, grades, classrooms or student groups to remote instruction for up to 20 days until Dec. 31, 2021. Remote instruction is limited to 20 days per district.

As previously [defined and released in guidance](#), "remote instruction" means a method of instruction where teachers and staff facilitate learning for students through digital and non-digital strategies while students are in a location other than the school – likely from home – and where students and instructors are not physically present together in a traditional in-person setting, such as a classroom.

In the same general regard that districts monitor/track in-person student daily instruction, schools and districts shall develop internal continuation of learning strategies appropriate for students temporarily assigned to remote instruction. This can include, but not be limited to, gauging interactions and engagement through lesson plans, pacing guides, observation, student work and assessments. Additionally, metrics provided through synchronous and asynchronous digital tools for interactions/engagement (such as activity time in a learning management system) can be used. As part of the strategy, districts should utilize digital strategies from last school year's extended NTI period that proved effective, as well as any new blended learning strategies developed by the school or district for this year. Consistent intentional interactions with quarantined students (either with the in-person traditionally assigned teacher or other certified staff assigned to assist with remote instructional activities) are encouraged as part of the strategy, but there is no required amount or type of specific interaction that needs to be kept track of for reporting purposes. Attendance auditors will check for written documentation outlining delivery of instruction for quarantined/isolated students during attendance audits.

In alignment with best practices for distance, virtual and remote strategies, the instructional design found in the continuation of learning plans, when possible, shall utilize a learning management system (LMS) or other digital platform that allows teachers to monitor students' progress, interactions and engagement with the teacher and other students online for the review of student work and completion of assignments in both real time and on demand (asynchronous interactions). Frequent live, regularly scheduled contact with a Kentucky certified teacher is highly suggested to produce more effective results. Remote learning (implemented pursuant to SB1 contained herein) should prioritize this contact when possible.

When students are assigned to temporary remote instruction, they must be coded with an Absent/Exempt attendance code of "Temporary Remote Instruction (TRI)." Districts should create this code in Infinite Campus. These students also must be given a transportation code of "NT: Non Transport" for the days they receive temporary remote instruction.

Students coded "TRI" must continue to receive daily instruction remotely. This does not have to be 100% synchronous instruction, but should include interaction with a teacher.

Subject to exceptions established in [KRS 158.060(3)](), the district must provide at least the equivalent of six hours of daily instruction. For specific guidance on students with IEPs, please see the "Temporary Remote Instruction for Students with IEPs" section at the end of the [Attendance Tracking for Temporary Remote Instruction document](). Students who do not engage in instruction while assigned to temporary remote instruction can and should be coded with the appropriate excused or unexcused absence code. Pursuant to SB 1, districts are required to continue to enforce compulsory attendance requirements set forth in KRS Chapter 159.

Specific questions related to attendance codes should be directed to Josh Whitlow, Division of District Support, at (502) 564-5279, ext. 4450, or [josh.whitlow@education.ky.gov.]()

Preschool

Strategies for implementing temporary remote instruction for preschool students should be developmentally appropriate and informed by emerging research about appropriate use of technology to support the developmental and academic learning needs of young children. Resources include the [National Association of State Boards of Education](), the [Erikson Institute Technology in Early Childhood Center](), and the Head Start [Early Childhood Learning and Knowledge Center](). The Early Childhood Regional Training Centers may be able to provide information regarding best practices for students who receive special education and related services.

Students with Disabilities

Under the Individuals with Disabilities Education Act (IDEA), students with disabilities are entitled to a Free Appropriate Public Education (FAPE). The district must continue to implement the student's Individual Education Program (IEP) during remote instruction. Specially designed instruction (SDI) must be provided by a certified special education teacher or related service provider (34 CFR §300.156).

Strategies for implementing temporary remote instruction for students with disabilities should be designed to continue progress toward the goals and objectives outlined in a student's IEP. When planning remote instruction, the school and district should be guided by emerging research about appropriate use of technology. These strategies must support the unique learning needs of the student.

Below are resources for providing services during remote instruction:
- Resources for Teaching Remotely | Council for Exceptional Children
- Resources for Learning at Home | U.S. Department of Education
- IRIS | Assistive Technology: An Overview (vanderbilt.edu)

Gifted and Talented

During periods of remote instruction, "A student diagnosed as possessing gifted characteristics, behaviors or talent shall be provided articulated, primary through grade twelve (12) services … " (704 KAR 3:285, Section 6).

Below are resources for Gifted and Talented (GT) remote instruction:
- GT Resource Spreadsheet for Remote Learning
- National Association for Gifted Education (NAGC): Teaching Online: Best Practices, Technology & Tools
- NAGC: PreK-12 Enrichment & Educational Resources
- NAGC: Social Emotional Support
- Kentucky Association for Gifted Education: Covid-19 Considerations for Best Practices for Gifted and Talented Educational Services K-12 Upon Reopening

Adjusted Average Daily Attendance Data for 2022-2023 SEEK Funding

For school year 2021-2022, school districts may, when submitting the Superintendent's Annual Attendance Report, substitute attendance data for school year 2018-2019 or for school year 2019-2020 for attendance data for school year 2021-2022. The selected data shall be utilized to calculate the average daily attendance that will be used in calculating Support Education Excellence in Kentucky (SEEK) funds and any other state funding based in whole or in part on

average daily attendance for the district. Current year data will be used for property assessment, exceptional child counts and limited English proficiency child counts.

If a district wishes to keep its prior AADA selection under SB 177 (2020)/HB 208 (2021), then nothing is required. If the district wishes to change its selection, please notify Jessi Carlton at (502) 564-3930, ext. 2468, or jessica.carlton@education.ky.gov prior to the Sept. 24, 2021, deadline.

Regardless of the AADA data used for SEEK funding, districts must continue to report student attendance in Infinite Campus and enforce compulsory attendance under KRS Chapter 159. The General Assembly has indicated that it intends to enact legislation in the 2022 General Session to address the adjustment of SEEK calculations related to attendance growth over prior school years.

Non-traditional Instruction

The non-traditional instruction (NTI) program received minor modifications under SB1. For the 2021-2022 school year, districts with approved Continuation of Learning plans will continue to receive their usual allotment of 10 NTI days. Districts will continue to report those days to KDE following usual procedures. If a district uses NTI days for a COVID-19-related event, all certified and classified staff are required to report to their designated place of work to deliver instruction that day. This rule is only in effect for COVID-19-related NTI days used after Sept. 9, 2021. Districts may continue to follow their usual procedures for NTI days called for other allowable events. Questions related to non-traditional instruction may be directed to David Cook at (502) 564-4201, ext. 4832, or david.cook@education.ky.gov.

Staffing Flexibilities

SB1 provides districts with additional flexibilities to meet the staffing demands for the 2021-2022 school year.

Emergency Substitutes

For the 2021-2022 school year, districts may employ individuals with the following qualifications as emergency substitutes:

a) At least 64 hours of college credit; or
b) A high school diploma or equivalent and 4 years of occupational experience related to education, childcare or the subject area to be taught.

The grade point average requirement contained in 16 KAR 2:120 is not required for the 2021-2022 school year. All prospective emergency substitutes must apply for the one-year emergency

substitute certificate from the Education Professional Standards Board (EPSB). The responsibility will be on the employing district to ensure applicants meet the above requirements. The EPSB is updating the application for emergency substitute certification to reflect the new criteria. SB 1 allows the district to employ the individual prior to the receipt of the certificate if all other requirements are met.

Emergency substitutes may serve as short-term or long-term substitutes. However, if an emergency substitute is listed as the teacher of record for any course, it will appear as an error on the Local Educator Assignment Data (LEAD) report. To avoid an error on the LEAD report, the substitute should be entered as an additional teacher and not the teacher of record on the course(s) in Infinite Campus.

Vacancies

For the 2021-2022 school year, a district may fill certified positions without following the vacancy process in [KRS 160.380(2)(b)-(d)](#). Specifically, districts are not required to:

- Post the vacancy in the Kentucky Educator Placement System (KEPS);
- Wait fifteen (15) days before filling the position;
- Request a waiver to fill a vacancy in less than fifteen (15) days;
- Conduct a search to locate minority teachers to be considered for the position; or
- Report the district's recruitment process to increase the percentage of minority teachers.

KEPS still will be available for districts to post a vacant position. While there is no requirement to post vacancies in KEPS, 2021-2022 vacancy data will be used in determining critical shortage areas for the 2022-2023 school year. Districts also will have the ability to conduct searches to locate minority teachers and report the district's recruitment process if they choose.

Classified Staff

For the 2021-2022 school year, any classified staff employed by the district as of Sept. 9, 2021, may:

- Perform classroom instructional activities without direct supervision by certified staff; and
- Provide home or hospital instruction.

A certificate is not required for these individuals to perform the above referenced tasks.

Please note that per the Individuals with Disabilities Education Act (IDEA), for students who have an IEP, specially designed instruction is the responsibility of certified special education teachers or related service providers. Nothing in Section 8 of SB 1 shall be interpreted to waive any requirements of the IDEA or any other federal act.

Background Checks

For the 2021-2022 school year, a superintendent may employ all individuals on probationary status upon receiving a preliminary background check conducted by the Administrative Office of the Courts, provided the requisite background checks have been requested by the date the probationary employment begins.

Retired Certified Employee Return to Work (RTW) Provisions

SB 1 created certain temporary changes to retired return to work (RTW) rules of the Teachers' Retirement System (TRS).

The details of SB 1 as it relates to TRS are as follows:

- Only those who retired on or before Aug. 1, 2021, are eligible.
- The exceptions provided in SB 1 only apply for RTW teaching positions hired by local school districts.
- The exceptions provided in SB 1 only continue through Jan. 15, 2022.
- Standard breaks in service do not apply; the only requirement is a one-month break in service that should already have been serviced by anyone who would be eligible under this law.
- The critical shortage limitation of 1% of active teachers is increased to 10% through Jan. 15, 2022 (the limitation returns to 1% on Jan. 16, 2022).
- Retirees already returned to work are eligible for the critical shortage program as determined by the district subject to the above limitations.
- Anyone who is in RTW because of this law can continue employment beyond SB 1's expiration without a further break in service under RTW rules of KRS 161.605.

Most RTW aspects do not change. These aspects that do not change include:

- Retirees who are active in the workforce must drop health insurance coverage through TRS if they are eligible for health insurance through their job. If insurance is available through the employer, TRS insurance, regardless of whether it is the Kentucky Employees' Health Plan (KEHP) or the Medicare Eligible Health Plan (MEHP), must be waived. Additionally, once a retiree loses eligibility for the active-employment insurance, the retiree should contact TRS immediately to enroll in its coverage within the qualifying event period (usually 30 days).
- The reporting requirements, including how critical shortage positions are designated in Pathway, remain the same.

- For those who aren't in critical shortage positions, the normal day and pay limitations, such as daily wage threshold, apply. (The only temporary exception for RTW retirees who aren't in critical shortage is the break in service duration.)

For questions about SB 1's return to work provisions impacting TRS members, please visit TRS' Return to Work webpage. contact Beau Barnes at beau.barnes@trs.ky.gov.

Retired Classified Employee Return to Work (RTW) Provisions

SB 1 created similar temporary changes to return to work (RTW) rules for retired classified employees in the County Employees Retirement System (CERS). They are:

- Applicable to individuals that retired on or before Aug. 1, 2021, who subsequently return to employment for a local board of education in a full-time or part-time classified position, or in a position providing substitute classified services.
- Standard breaks in service do not apply; the only requirement is a one-month break in service that already should have been serviced by anyone who would be eligible under this law.
- The exceptions provided in SB 1 only continue through Jan. 15, 2022.
- Anyone who is in RTW because of this law can continue employment beyond SB 1's expiration without a further break in service under RTW rules of KRS 61.637 or 78.5540.

For more information about retired classified staff returning to work, please visit the Kentucky Public Pension Authority's Reemployment webpage.

Preschool

School districts should make informed decisions when determining classroom assignments, as well as make reasonable efforts to ensure classified teachers are supervised when performing preschool classroom instructional activities. For example, specially designed instruction (SDI) must be provided by an Interdisciplinary Early Childhood Education (IECE) certified teacher or qualified related service provider. Certified preschool teachers must take the lead in the planning, designing, initial delivery and monitoring of SDI as outlined in the student's Individual Education Program (IEP) [16 KAR 2:040, Section 4 (2)].

Students with Disabilities

Under the Individuals with Disabilities Education Act (IDEA), specially designed instruction (SDI) for students with Individual Education Programs (IEPs) must be provided by a certified special education teacher or qualified related service provider under (34 CFR §300.156). SB 1, Section 8 (7) also states, "Nothing in this section shall be interpreted to waive any requirements

of the 6 Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. or any other 7 federal acts." As such, the personnel requirements of the IDEA continue to apply.

Adjusting Daily Instructional Minutes

For school year 2021-2022, SB1 waives the requirement that a student instructional year contain 170 student attendance days, but retains the requirement that districts provide a minimum of 1,062 instructional hours. Districts may adjust daily schedules to include no more than 7 hours (420 minutes) of instructional time each day. Districts may not schedule instructional days on Saturdays. Adjusting minutes on an existing calendar in Infinite Campus must be done carefully as to not impact instructional days that already have occurred. To properly add instructional minutes to a calendar, please follow the guidance on Pages 14-18 of the Amending Calendar Guidebook.

Specific questions related to calendar changes and updates should be directed to Josh Whitlow, KDE Division of District Support, at (502) 564-5279, ext. 4450, or josh.whitlow@education.ky.gov.