**Variable Student Instructional Year Calendar FAQs**

[KRS 158.070](https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=48224) allows a local school district that “adopts a school calendar with the first student attendance day in the school term starting no earlier than the Monday closest to August 26 [to] use a variable student instructional year.”[[1]](#footnote-1)[1] A variable student instructional year (VSIY) “means at least one thousand sixty-two (1,062) hours of instructional time delivered on the number of student attendance days adopted by a local board of education which shall be considered proportionally equivalent to one hundred seventy (170) student attendance days and calendar days for the purposes of a student instructional year, employment contract that are based on the school term, service credit under KRS 161.500, and funding under KRS 157.350.”[[2]](#footnote-2)[2]

In order to utilize the VSIY and have 1,062 instructional hours be considered the proportional equivalent to 170 instructional days, a school district must adopt a VSIY with its first student instructional day for the 2020-2021 school year on or after Aug. 24, 2020. Otherwise, the school district must deliver instruction on no less than 170 student attendance days as required by KRS 158.070(1)(f).

If a school district elects to utilize a VSIY, school district employees with contracts based on the school term will receive credit for 170 days toward the total number of days required by their contracts when the school district completes 1,062 hours of instructional time. Employees with contracts based on the school term will be required to complete any additional contract days above the 170 days achieved using the VSIY. For example, if a teacher is contracted to work 185 days, 170 of the 185 days will be satisfied for contract purposes when the district completes 1,062 hours of instructional time, regardless of the actual days of instruction. However, the teacher must complete the remaining 15 contract days on a day-for-day basis as required by school district policies.

Since KRS 158.070(1)(h) does not distinguish between certified and classified employment contracts, both certified and classified employees with contracts based on the school term will receive 170 days credit toward their required contract days when the school district completes 1,062 instructional hours under a VSIY, regardless of actual days of instruction. For employees paid on an hourly basis, employees will be paid for actual hours worked. For example, if hourly employees with contracts based on the school term work eight hours per day under the VSIY (instead of 7.5 hours under a traditional school calendar), they should be paid for eight hours each day they actually work or utilize paid leave.

When the school district completes 1,062 instructional hours under a VSIY, 170 days of the hourly employee’s contract will be satisfied pursuant to KRS 158.070. However, in satisfaction of the 170 days of the contract, the hourly employee will not be paid for hours other than those actually worked or for which paid leave was utilized during the days the district provided 1,062 instructional hours. As with the teacher in the example above, hourly employees must complete the remaining contract days beyond 170 on a day-for-day basis as required by school district policies. School districts must comply with all applicable wage and hour requirements for hourly employees. School districts should review all wage and hour requirements at the [Kentucky Labor Cabinet website](https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Flabor.ky.gov%2Fstandards%2FPages%2FWages-and-Hours.aspx%23Statutes_and_Regulations&data=02%7C01%7Cmatt.ross%40education.ky.gov%7C085ae31e17e44330695408d812cdd5a4%7C9360c11f90e64706ad0025fcdc9e2ed1%7C0%7C0%7C637280022552881101&sdata=sTYYKUf0GzM5gTGGTBhcqh1h1yDOc0LluPXaudRZJyY%3D&reserved=0).

The Teachers Retirement System (TRS) has informed the Kentucky Department of Education (KDE) that for school districts following the statutory guidelines for VSIY’s, their teachers/employees will receive a full year of service credit if they complete the contract year under the VSIY. TRS has indicated they will need to work with employers to make sure their reports to TRS are handled correctly to ensure there no issues in reporting/recording service credit. TRS also informed KDE that they would be glad to review any new proposals for school calendars that may develop. Please direct any further questions to the Teachers Retirement System.

KDE contacted the Kentucky Retirement Systems regarding the impact of the VSIY and retirement credit for classified employees participating in County Employees Retirement Systems (CERS). Kentucky Retirement Systems provided a 2003 memo sent to agency reporting officials when legislation passed regarding lengthening the school day in order to make up additional days for emergencies such as inclement weather. It appears that Kentucky Retirement Systems is applying the same logic to calculations of retirement credit for the VSIY.

Based on the 2003 memo, it appears that if a district utilizes the VSIY and the number of additional hours worked by a classified employee is equal to or greater than the decrease in days as a result of the variable calendar, the employee will get credit for a full year for retirement. However, if an employee does not work additional time per day, it appears that the employee will have to work additional days in order to receive retirement credit. Please direct any further questions to your Employer Reporting Compliance and Education representative at the Kentucky Retirement Systems.

**FAQs**

**Question:** If food service staff, for example, work 7.5 hours for 180 days, would the scenario be that they work 28 days more than the teachers working 152 days on a variable calendar situation?

I understand that most classified work by the hour, but I also don’t think we should cut their salaries just because we are using a variable calendar during this COVID crisis, so I’m asking if I read the email correctly.

In the situation where a classified staff person, like a food service worker who works by the hour but expects to make a salary that has them working 7.5 hours a day for 180 days. If we kept them at that salary and if the teachers are working 152 days plus the 15 other days = 167 days – would the scenario be that the food service staff would have to work the 152 variable calendar days plus 28 more days to receive their same salary? 152 + 28=180 days?

**Answer:** KRS 158.070(1)(h) states the following: “‘Variable student instructional year’ means at least one thousand sixty-two (1,062) hours of instructional time delivered on the number of student attendance days adopted by a local board of education which shall be considered proportionally equivalent to one hundred seventy (170) student attendance days and calendar days for the purposes of a student instructional year, employment contracts that are based on the school term, service credit under KRS 161.500, and funding under KRS 157.350.”

KRS 158.070(1)(h) does not distinguish between certified and classified employment contracts. Therefore, both certified and classified staff with contracts based on the school term will be considered as having satisfied 170 days. If a district reaches 1,062 hours in 152 days, those 152 days are the equivalent of 170 contract days. As such, a classified employee with a 180 day contract will owe 10 days under the contract. Since classified staff are hourly employees, they can only be paid for hours worked.

For contracts that specify 180 days, if a school district does not either (1) work the classified staff member additional hours; (2) increase the classified staff member’s hourly rate of pay; or (3) add additional days to the contract as you propose, then the result may be that the classified employee’s pay is effectively reduced by 18 days.

**Question:** Our board approved this past week, starting on Aug. 26, having all of our schools do a seven hour instructional day. This would give our students 1,190 hours of instructional time. Their thinking though, is that would give us 18 banked days to play with, so that if COVID-19 hits in December, then we could cancel school and technically not have to make it up since we are going to be way over the 1,062 hours at the end.

Now the question was asked of me today, that are the teachers’ contract automatically at day 170 when our students get to 1,062 hours of instructional time, or if we do end up going to 1,190 hours, are they still considered at 170 instructional days? This will make a difference if the schools have to back up their instructional time or the board has to adjust the calendar to go fewer days. I hope my question makes sense. Please let me know when you do get the answer.

**Answer:** The intent of the VSIY is to permit districts to complete 1,062 hours of instructional time in less than 170 days. If a district goes 170 days or more, then the VSIY option is not applicable.

**Question:** How does the Variable Instruction Calendar work for federally funded employees?

**Answer:** To the best of our belief and knowledge, it works the same as for other certified employees.

**Question:** Do we have to notify anyone that it is a VSIY if we start on or after Aug. 24. For example, if we create a calendar with the first day for students on Aug. 26 and we go to school through May 28,. we will have 172 instructional days and 1,099 hours. Can we just make this our calendar and then if we have a COVID outbreak, we make an adjustment to reduce by 37 hours, which is about 5 days if necessary? If we are lucky and can attend all 172 days is that okay as well?

**Answer:** The intent of the VSIY is to permit districts to complete 1,062 hours of instructional time in less than 170 days. If a district goes 170 days or more, then the VSIY option is not applicable.

**Question:** When classified employees follow the guidance listed with the variable calendar, it negatively affects their service credit for retirement. Can food service and transportation count their time as “instructional,” similar to a classroom instructional assistant or special education aide?

**Answer:** See statement and information from Kentucky Retirement Systems above. Please direct any further questions to your Employer Reporting Compliance and Education representative at the Kentucky Retirement Systems.

**Question:** I thought we could only pay teachers for days worked, not "time" worked. If teachers are contracted to work 188 days, are you saying with the alternate calendar, they would automatically get credit for the 170 days like students? And only have to work an additional 18 days?

**Answer:** If a school district elects to utilize a VSIY, school district employees with contracts based on the school term will receive credit for 170 days toward the total number of days required by their contracts when the school district completes 1,062 hours of instructional time. Employees with contracts based on the school term will be required to complete any additional contract days above the 170 days achieved using the VSIY.

For example, if a teacher is contracted to work 185 days, 170 of the 185 days will be satisfied for contract purposes when the district completes 1,062 hours of instructional time, regardless of the actual days of instruction. However, the teacher must complete the remaining 15 contract days on a day-for-day basis as required by school district policies.

Since KRS 158.070(1)(h) does not distinguish between certified and classified employment contracts, both certified and classified employees with contracts based on the school term will receive 170 days credit toward their required contract days when the school district completes 1,062 instructional hours under a VSIY, regardless of actual days of instruction. Certified staff are on a salary so they will receive credit for 170 days and will be paid accordingly.

Classified staff who are paid hourly will also receive credit for 170 days, but will only be paid for the number of hours actually worked. When the school district completes 1,062 instructional hours under a VSIY, 170 days of the hourly employee’s contract will be satisfied pursuant to KRS 158.070. However, in satisfaction of the 170 days of the contract, the hourly employee will not be paid for hours other than those actually worked or for which paid leave was utilized during the days the district provided 1,062 instructional hours. As with the teacher in the example above, hourly employees must complete the remaining contract days beyond 170 on a day-for-day basis as required by school district policies.

School districts must comply with all applicable wage and hour requirements for hourly employees. School districts should review all wage and hour requirements at the [Kentucky Labor Cabinet website](https://labor.ky.gov/standards/Pages/Wages-and-Hours.aspx#Statutes_and_Regulations).

**Question:** If using the variable instruction calendar, then does the local board need to revise contracts to 15 days over the instructional days taught or is that an option of the board to keep it at 185 contract days?

**Answer:** Districts should consult with their board attorney regarding the impact of the VSIY on employment contracts.

**Question:** Does the proportional equivalence also count toward classified contracts? The statute says, “Proportionally equivalent to 170 days” for purposes of employment contracts, service credit and funding.

**Answer:** KRS 158.070(1)(h) does not distinguish between certified and classified employment contracts. Therefore, both certified and classified staff with contracts based on the school term will receive credit for 170 days toward the total number of days required by their contracts when the school district completes 1,062 hours of instructional time.

Employees with contracts based on the school term will be required to complete any additional contract days above the 170 days achieved using the VSIY. For example, if a district reaches 1,062 hours in 152 days, those 152 days are the equivalent of 170 contract days. As such, a classified employee with a 180 day contract will owe 10 days under the contract.

Since classified staff are hourly employees, they can only be paid for hours worked. School districts must comply with all applicable wage and hour requirements for hourly employees. School districts should review all wage and hour requirements at the [Kentucky Labor Cabinet website](https://labor.ky.gov/standards/Pages/Wages-and-Hours.aspx#Statutes_and_Regulations). See also the above statement and information from Kentucky Retirement Systems.

**Question:** If an original calendar is submitted with 170 days beginning in early August and we delay school to start on August 24th then the amended calendar would still have to have 170 days? That would not automatically allow us to be in the guidelines of the variable calendar.

**Answer:** If instruction for students begins on or after Aug. 24, 2020, and meets the requirements for meeting a variable calendar, you can amend your calendar at the end of the year. A district should contact their field staff if they have questions or would like to amend their original calendar.

**Question:** Are the retirement folks on board with these contract days issues?

**Answer:** See above statements and information from the Teachers Retirement System and Kentucky Retirement Systems.

**Question:** If we start school the first week of August, then we are required to close again due an increase in the number of COVID cases, will we still be required to get in 170 days or the 1,062 hours?

**Answer:** Yes, barring an Executive Order or legislation modifying the existing student instructional year requirement, the district must complete at least 1,062 instructional hours delivered on not less than 170 student attendance or adopt the VSIY calendar.

**Question:** What about a classified employee as far as the 152 go? Do they work the 18 days to equal 170?

**Answer:** See initial statement about the impact of a VSIY on classified and certified staff.

**Question:** Do we have to get alternate calendars approved by our board? Can we not just treat that as an amended calendar if the need arises?

**Answer:** You can amend your calendar at the end of the year if it meets the requirements for the variable calendar, which allows 1,062 hours of instruction to be completed in less than 170 days. Districts should contact their field staff for information and assistance in amending their original calendar.

The process for amending a calendar is set forth in KRS 158.070(4)(b), as follows:

*If a local board of education amends its school calendar after its adoption due to an emergency, it may lengthen or shorten any remaining student attendance days by thirty (30) minutes or more, as it deems necessary, provided the amended calendar complies with the requirements of a student instructional year in subsection (1)(f) of this section or a variable student instructional year in subsection (1)(h) of this section. No student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.*

**Question:** KRS 158.070 1(h) defines the “variable student instructional year.” It states that the number of days adopted by the board shall be considered PROPORTIONALLY EQUIVALENT to 170 CALENDAR days for employment contracts and service credit. Does this mean (for example) IF a district only has 162 student attendance days/instructional days/calendar days that the 162 days = 170 teacher contract days and service credit days? If so, we have fewer “teacher equivalency” days to add to the beginning of the school year.

**Answer:** Yes, employees would need to work the additional days to meet their contractual requirements over the 170 proportional days.

**Question:** Can the Board of Education amend its 2020-2021 original calendar to meet the requirements for the Variable Instruction Calendar and be granted the flexibility per KRS 157.350?

**Answer:** If your district ultimately implements a calendar meeting the requirements of a VSIY, then the district can amend the calendar at the end of the year. Districts should contact their field staff for information and assistance in amending their original calendar.

The process for amending a calendar is set forth in KRS 158.070(4)(b), as follows:

*If a local board of education amends its school calendar after its adoption due to an emergency, it may lengthen or shorten any remaining student attendance days by thirty (30) minutes or more, as it deems necessary, provided the amended calendar complies with the requirements of a student instructional year in subsection (1)(f) of this section or a variable student instructional year in subsection (1)(h) of this section. No student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.*

**Question:** Our goal as a district is to get our kids in the building for instruction and not have to cut student days. I understand if that is touch and go this year. We do not want to increase minutes in the school day for the 2020-2021 school year until we have to do so. If the state is once again forced to turn to non-traditional instruction due to issues with COVID, will school districts operating on variable instruction be able to increase minutes within the school year (while the school year is underway)?

**Answer:** KRS 158.070(4)(b) states:

*If a local board of education amends its school calendar after its adoption due to an emergency, it may lengthen or shorten any remaining student attendance days by thirty (30) minutes or more, as it deems necessary, provided the amended calendar complies with the requirements of a student instructional year in subsection (1)(f) of this section or a variable student instructional year in subsection (1)(h) of this section. No student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.*

**Question:** Would starting on the Tuesday after Labor Day still count as the waiver for 170 days since it is into the next month?

**Answer:** Yes, if the instruction begins after Aug. 24, 2020, the variable calendar can be utilized. KRS 158.07(2)(f) states:

*Beginning with the 2018-2019 school year, and each year thereafter, a local school board of education that adopts a school calendar with the first student attendance day in the school term starting no earlier than the Monday closest to August 26 may use a variable student instructional year. Districts may set the length of individual student attendance days in a variable student instructional schedule, but no student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.*

**Question:** I know that with the variable calendar option allows for the “proportionally equivalent” funding for SEEK. Does that also include proportionally equivalent funding for transportation since days transported will be fewer and play into the funding formula for transportation?

**Answer:** No. However, KDE is aware of this and will work with the Governor’s Office and the legislature on the issue.

**Question:** For high school students, if the variable calendar is used, how will the schedule be set up for some students being in attendance and others on the same roster being performance based?

**Answer:** KDE is working with Infinite Campus on solutions to track and count student participation for the upcoming school year.

**Question:** To take advantage of the variable instructional calendar, we can't treat it as amended calendar, correct? We would need to submit a new calendar if we have already submitted our calendar. Is that right?

**Answer:** If the district uses a calendar that conforms to the requirements of a VSIY as set forth in KRS 158.070, the district may amend the calendar at the end of the year. If you have questions about amending a calendar or need assistance is so doing, please contact your field staff. The authority for amending the calendar is set out in KRS 158.070(4)(b). That statute states:

*If a local board of education amends its school calendar after its adoption due to an emergency, it may lengthen or shorten any remaining student attendance days by thirty (30) minutes or more, as it deems necessary, provided the amended calendar complies with the requirements of a student instructional year in subsection (1)(f) of this section or a variable student instructional year in subsection (1)(h) of this section. No student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.*

**Question:** If a district increases teacher contracts to account for the loss of days due to a variable contract, would the teacher get credit for one year of service? For example, a district adopts a variable calendar with seven hour days and reaches 1,062 in 152 days. A teacher with a 195-day contract would get the benefit of the variable calendar’s proportionally equivalent days in that the 152 would equal 170 days, but the teacher would still need to complete the 25 remaining days under the contract to get credit for the year.

**Answer:** The member would achieve a proportional equivalent of the 170 instructional days under the VSIY by reaching 1,062 hours in 152 days. The remaining 25 non-instructional days would need to be completed for a full year of service credit with TRS. Members who work until the end of the school and have a complete year is not an issue.

If the district encounters a scenario under which the member leaves before the end of the year or begins working mid-year, the employer will need to carefully report their days worked so that proper service credit can be allocated to the member’s account. A district with such questions should contact their employer representative at TRS.

**Question:** 29 CFR 541.303(a) exempts teachers from overtime pay. However, we are being told a teacher's contract is proportional. Why would they get credit for extra time worked, when they are over time exempt by federal law?

**Answer:** The Fair Labor Standards Act and its corresponding regulations provide the minimum standards. States are permitted to set higher standards which the Kentucky legislature has done in KRS 158.070. Therefore, if a school district elects to utilize a VSIY, school district employees with contracts based on the school term will receive credit for 170 days toward the total number of days required by their contracts when the school district completes 1,062 hours of instructional time.  Employees with contracts based on the school term will be required to complete any additional contract days above the 170 days achieved using the VSIY.

*(Office of Finance and Operations, Student Tracking and Data Branch)*

1. [1] KRS 158.070(2)(f) [↑](#footnote-ref-1)
2. [2] KRS 158.070(1)(h) [↑](#footnote-ref-2)