EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

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

RELATES TO: KRS 156.070, 156.160, 160.380, 160.345, 158.6451, 158.4416

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education management and control of programs operated in the common schools. KRS 156.160 authorizes the Kentucky Board of Education 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 for grades Kindergarten through grade 12.  
Section 1. Definitions. (1) "Full-Time Enrolled Online, Virtual and Remote Learning Program" is defined as a public school district program that enrolls K-12 students on a full-time basis, where teachers and students are not in the same physical location and all or most of the instruction is provided online through a combination of synchronous and asynchronous learning strategies. A full-time enrolled online, virtual and remote learning program shall not be classified as an alternative education program as set forth in 704 KAR 19:002.

(2) "Child with a disability" is defined by 707 KAR 1:002, Section 1.

(3) "Individual education program" or "IEP" is defined by 707 KAR 1:002, Section 1.

(4) "Individual learning plan" or "ILP" is defined by 704 KAR 19.002, Section 1.

(5) "Voluntary placement" means the placement of a student in an online, virtual and remote learning program at the request of the parent or emancipated student and with the approval of the school district to:

(a) ensure the health and safety of the individual student including the social, emotional, and mental health needs of the learner; and

(b) meet the educational needs of the student.

(6) “Virtual Performance-Based” means course setup and attendance verification per 702 KAR 7:125, (1)(4)(g); 704 KAR 3:305(7). Performance-Based virtual students included in the exception set forth at 702 KAR 7:125(1)(4)(g) shall not be covered by this administrative regulation.

(7) “Synchronous learning” means forms of education, instruction, and learning that occur at the same time through a variety of strategies and tools.

(8) “Asynchronous learning” means forms of education, instruction, and learning that do not require interaction with others to occur at the same time through a variety of strategies and tools.

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

(a) All of the education services and requirements as a physical school to fully support the academic, social, emotional, and mental health needs of the learner are provided.

(b) The online, virtual and remote learning program meets the requirements set forth in 704 KAR 3:305;

(c) The online, virtual and remote learning program is aligned to the academic and curricular requirements of the district.

(d) A student enrolled in a full-time enrolled online, virtual and remote learning program shall be eligible to participate in one (1) or more types of programs to address student learning needs which shall include credit acceleration, credit accumulation, and an innovative path to graduation.

(2) 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 the:

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

(f) 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.

(g) Only students with determined appropriate digital access and support beyond the school campus shall be candidates for enrollment in the virtual school, program, or academy. The district shall ensure all students enrolled in virtual school, program, or academy have appropriate digital access to fully participate in and access the online, virtual, and remote learning program.

(3) Full-time enrolled online, virtual and remote learning program curriculum shall be aligned with the Kentucky Academic Standards established in 704 KAR 3:303, 704 KAR Chapter 8, and the student learning goals in the ILP.

(4) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(5) Each student enrolled in a full-time enrolled online, virtual and remote learning program shall participate in the state-required assessment program and be included in the state accountability system as set forth in 703 KAR Chapter 5.

(6) A full-time enrolled online, virtual and remote learning program shall be subject to all applicable requirements of 703 KAR 5:225 and Kentucky's Consolidated State Plan implementing the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015, or its successor.

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

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

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

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

(2) A student entering an online, virtual and remote learning program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

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

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

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

Section 4. Costs and Expenditures. (1) Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each full-time enrolled online, virtual and remote learning program operating in the district.

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

(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student enrollment, educational programming, achievement, and transition to and from enrollment in the full-time enrolled online, virtual and remote learning programs.

Section 6. Personnel. (1) Full-time enrolled online, virtual and remote learning program teachers and administrators shall be subject to the teacher certification requirements established in KRS 161.020, and shall comply with the classified and certified assignment restrictions established in KRS 160.380(3).

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

Section 7. Class Size. (1) Full-time enrolled online, virtual and remote learning programs shall meet the requirements set forth in KRS 157.360 and 702 KAR 3:190 for maximum class sizes and exemptions thereto.

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

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

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

(b) Attendance shall be recorded at least two times each school day for virtual elementary school students with checks three hours apart by certified teachers;

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

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

(e) Attendance clerks or other assigned district personnel shall reconcile attendance for each course/period to ensure proper codes are entered for absent students. Attendance event absence codes shall be entered at the office level (i.e. Dr. Excuses/parent excuses); and

(f) District online, virtual, and remote learning program attendance records shall be subject to audit by the Kentucky Department of Education.

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

(a) the attendance status of students with an internet outage;

(b) the process to return students to in-person instruction for truancy violations; and

(c) the district process for actions it shall take pursuant to KRS Chapter 159 for truant students.

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

(a) Accurately measure student progress on grade-level standards for students enrolled in a full-time enrolled online, virtual and remote learning program; and

(b) Support students enrolled in the full-time enrolled online, virtual and remote learning program needing accelerated learning on grade-level standards within universal instruction as well as those students who need more targeted interventions and supports.

(2) The full-time enrolled online, virtual and remote learning program shall implement synchronous learning strategies and digital platforms for two-way visual and verbal interactions. Additionally, the full-time enrolled online, virtual and remote learning program shall utilize a learning management system (LMS) or other digital platforms that allows teachers to monitor student's progress, interactions and engagement with the teacher and other students online for the review of student work and completion of assignments through both synchronous and asynchronous interactions.

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

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

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

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) Jason E. Glass, Ed.D.

Commissioner of Education

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date) Lu S. Young, Ed.D.,

Chairperson Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held October 25, 2022, at 10am in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days 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 canceled. 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 until October 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

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](mailto:regcomments@education.ky.gov)REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 704 KAR 3:535

Contact Person: Todd G. Allen, [Todd.Allen@education.ky.gov](mailto:Todd.Allen@education.ky.gov)

Phone Number: 502-564-4474

(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, 156.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Districts will use this regulation as the basis for creating local policies and procedures to establish 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: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statute: N/A

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this new 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.

(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: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 for K-12 students. Locally-adopted policies and procedures shall include the:

(a) 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) Process for entering students into the program;

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

(e) Process for development or continuation of students ILP as established in 704 KAR 3:305.

(f) Implementation of an application and on-boarding process to ensure students and families understand the expectations for full-time enrollment in an 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 new 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 new administrative regulation will ensure high-quality learning opportunities are made available through full-time enrolled online, virtual and remote learning programs for K-12 students. Additionally, the requirements will provide greater uniformity in data collection and reporting from these learning programs enabling the KDE to provide more timely and targeted supports moving forward.

(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: No increase in fees or funding will be necessary to implement this new administrative regulation.

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

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE

704 KAR 3:535

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: [todd.allen@education.ky.gov](mailto:todd.allen@education.ky.gov)

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education will be impacted.

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

1. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

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).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

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).

1. How much will it cost to administer this program for the first year?

While the exact cost is unknown, public school district budgets may be impacted by the need for new resources in support of the program, as with any newly established program (for example, alternative education program).  Kentucky Department of Education staff time will be impacted by the need for implementation guidance and general support.

1. How much will it cost to administer this program for subsequent years?

Little to no additional expenses are expected on an ongoing basis as a result of the new administrative regulation. The Kentucky Department of Education will provide ongoing programmatic support targeting established elements of high-quality.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The regulation is not designed for revenue generation for either the KDE or public school districts. However, it is not unreasonable for a district implementing this program to potentially see revenue in the form of SEEK funds through the enrollment of students who were previously unenrolled in the district or program (for example, homeschooled students).

Expenditures (+/-): N/A

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? Little to no additional expenses are expected as a result of this new administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Little to no additional ongoing expenses are expected as a result of this new administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars ($500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]

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.