



# **COVID-19 Guidance for Notice of Contract Non-renewal Pursuant to KRS 161.750 and KRS 161.011; Reduction in Duties Pursuant to KRS 161.760**

*May 11, 2020*

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The Kentucky Department of Education (KDE) received numerous requests from school districts for guidance regarding contract non-renewal pursuant to KRS 161.750 and KRS 161.011, and reduction in duties pursuant to KRS 161.760 in light of the COVID-19 state of emergency. Specifically, school districts question how to provide notice to employees of contract non-renewal pursuant to KRS 161.750 and KRS 161.011 or reduction in duties pursuant to KRS 161.760, and budgetary concerns that may impact contract non-renewal.

KDE is providing this guidance as technical assistance to school districts in an effort to answer questions surrounding contract non-renewal or reduction in responsibilities. This guidance is not legal advice. School districts should consult board counsel for legal advice.

## **Method of Notice**

**For certified employees without continuing service status** as provided in KRS 161.740, [KRS 161.750\(2\)](#) provides: *“If a superintendent does not renew the contract he shall present written notice to the teacher that the contract will not be renewed no later than May 15 of the school year during which the contract is in effect.”*

**For certified employees with additional responsibilities, regardless of continuing service status**, [KRS 161.760\(3\)](#) provides: *“Reduction of responsibility for a teacher may be accompanied by a corresponding reduction in salary provided that written notification stating the specific reason for the reduction shall be furnished to the teacher not later than ninety (90) days before the first student attendance day of the school year or May 15, whichever occurs earlier.”* Certified employees have no statutory right to additional responsibilities or pay from year to year.

**For classified employees who have not completed four years of continuous active service**, [KRS 161.011\(5\)\(a\)](#) provides: *“Contracts with classified employees shall be renewed annually except contracts with the following employees: An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than May 15, that the contract will not be renewed for the subsequent school year.”*

The Kentucky General Assembly passed [Senate Bill 177 \(2020\)](#) (SB177) as emergency legislation in response to COVID-19. Section 10 of SB177 provides: *“Notwithstanding KRS 161.011, KRS 161.750, and KRS 161.760, or any other statute or administrative regulation to the contrary, written notices required to be provided to classified and certified school district employees regarding salary or nonrenewal of contracts may be delivered via regular mail or via email to the email address on record in the school district.”*



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*May 11, 2020*

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Therefore, notices of contract non-renewal to certified and classified staff pursuant to KRS 161.750(2) and KRS 161.011(5)(a), as well as notice of reduction in responsibility to certified staff pursuant to KRS 161.760(3), may be provided electronically using the email address on file for the employee.

**Budget Concerns Impacting 2020-2021 Staffing**

Given the uncertainty around budget allocations and how COVID-19 may impact in-person services, including extracurricular activities, during the 2020-2021 school year, school districts are understandably struggling to determine staffing needs for the upcoming school year.

Individual school districts are in the best position to understand the needs of their students, as well as unique circumstances impacting local revenue. Therefore, KDE cannot prescribe a “one-size-fits-all” approach for all 172 public school districts. However, the following information is provided for consideration as districts make staffing determinations for the 2020-2021 school year:

School districts will soon receive funds from the Coronavirus Aid, Relief and Economic Security Act (CARES). Specifically, school districts will receive federal CARES funding from both the [Governor’s Emergency Education Relief Fund \(GEER\)](#) and [Elementary and Secondary School Education Relief Fund \(ESSER\)](#). While KDE cautions against the use of GEER and ESSER funds for fixed or recurring long-term expenses such as permanent staffing, school districts do have the ability to use GEER and ESSER funds to pay or supplement salaries for any of the [broad uses permitted by GEER and ESSER](#).

Furthermore, the CARES Act provides that school districts should continue to pay their employees and contractors “to the greatest extent practicable.” While this is not an absolute prohibition against non-renewal or reduction in additional responsibilities, school districts should consider all ways they can continue to pay employees.

*Section 11 of SB177 provides: “Notwithstanding any other statute or regulation to the contrary, for school year 2019-2020, school districts may, when submitting the Superintendent’s Annual Attendance Report, substitute attendance data for school year 2018-2019 for attendance data for school year 2019-2020. If a school district submits data for school year 2018-2019, this data shall be utilized to calculate the average daily attendance that will be used in calculating Support Education Excellence in Kentucky funds and any other state funding based in whole or in part on average daily attendance for the district.”*

This provision of SB177 was designed to provide school districts with some certainty in estimating their state funding receipts despite the impacts to in-person classes as a result of COVID-19. KDE’s Office of Finance and Operations conducted webcasts and provided



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guidance to school districts on the use of attendance date for school year 2018-2019 school year in place of attendance data for 2019-2020 school year, including the benefits of such a substitution. Districts should consider this substitution and the ability to estimate state funding receipts when making staffing decisions for the upcoming school year.

Of course, KDE cannot guarantee that state funding to school districts will not be reduced as a result of economic conditions resulting from COVID-19. As Interim Commissioner Kevin C. Brown announced during the Kentucky Board of Education meeting on May 7, 2020, the Office of State Budget Director recently requested that KDE make budget cuts. [Although KDE is likely to make current budget cuts without a reduction in funds to school districts, any future budget cuts to KDE will likely result in reduced funding to school districts.](#)

As a practical matter, school districts understandably want to know when in-person classes will resume and whether in-person classes and extracurricular activities will be interrupted by COVID-19 during the 2020-2021 school year. Unfortunately, KDE can neither provide a start date for the 2020-2021 school year, nor guarantee in-person classes will not be interrupted during the upcoming school year. KDE must defer to public health experts at the [Kentucky Department for Public Health \(DPH\)](#) on these recommendations.

Of course, KDE will continue to communicate with DPH and pass along all relevant information to school districts. As of the date of this guidance, DPH indicates a fall spike in COVID-19 cases is possible. Therefore, school districts are encouraged to plan for interruptions to in-person classes and extracurricular activities.

KDE encourages school districts to consider the information provided in this guidance document and the unique needs of students when making staffing decisions for the 2020-2021 school year. School districts should think creatively about duties that may be assigned to staff members. For example, consider whether coaching staff may provide health and nutrition guidance to students using video teleconferencing in the event of interruptions to extracurricular activities during the upcoming school year. Likewise, consider whether paraprofessionals may be needed to perform duties permitted using GEER or ESSER funds.

Finally, in the event a school district chooses to provide notice to one or more employees of contract non-renewal pursuant to KRS 161.750(2) and KRS 161.011(5)(a), or notice of reduction in responsibility pursuant to KRS 161.760(3), school districts may later rescind these notices or re-hire the individuals based on staffing demands.

If you have questions, contact Interim General Counsel, Todd G. Allen in the Office of Legal Services at [Todd.Allen@education.ky.gov](mailto:Todd.Allen@education.ky.gov).

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