



## COVID-19 Considerations for Reopening Schools

September 8, 2020

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### Truancy and Compulsory Attendance

As school districts begin the 2020-2021 school year, they are planning for a variety of instructional delivery models to meet the needs of students and communities in light of continued COVID-19 risks and mitigation measures. The models include traditional in-person instructional days, periods of complete remote learning through non-traditional instruction (NTI) and days of blended in-person and NTI delivery.

Kentucky's existing structure for instructional delivery and corresponding funding never anticipated a global health pandemic. In order to provide school districts with the flexibility needed to implement the various instructional delivery models, Kentucky Department of Education (KDE) Interim Commissioner Kevin C. Brown submitted a memorandum on June 24, 2020, that was signed by Lt. Gov. Jacqueline Coleman, who also serves as secretary of the Kentucky Education and Workforce Development Cabinet. [The memorandum](#), pursuant to the authority set forth in Executive Order (EO) 2020-243, temporarily suspends statutes that calculate school funding based on in-person average daily attendance for the upcoming school year.

The suspension of the statutes is necessary to provide for a funding mechanism that is predictable and does not risk the loss of substantial state educational funding based on average daily attendance (ADA). Pursuant to the authority set forth in [EO 2020-243](#), the memorandum suspends [KRS 157.360](#)(2), (9)-(11), (13)(a) and (16), and applicable corresponding provisions of [HB 352 \(2020\)](#) that allot funding using ADA. It also suspends [KRS 157.370](#) (3) for the 2020-2021 school year for SEEK payments that will occur during the 2021-2022 school year. The suspended statutes rely upon ADA for funding calculations, which would place at a disadvantage school districts that implement a blended traditional and NTI delivery strategy.

Following the suspension of the aforementioned statutes, the Kentucky Board of Education (KBE) approved an emergency amendment to 702 KAR 3:270E, effective upon filing with the Legislative Research Commission, that sets forth the calculation of state funding for school districts for the 2020-2021 school year (to be paid during the 2021-2022 school year). The emergency administrative regulation provides for substituting and utilizing the same attendance data selected by school districts pursuant to Senate Bill (SB) 177 (2020) for the 2019-2020 school year for application to the 2020-2021 school year.

Suspension of the statutes, coupled with the emergency administrative regulation, will provide state funding predictability to school districts and prevent the loss of substantial state funding typically based on ADA.

The memorandum explains that state compulsory attendance laws, codified in KRS Chapter 159, remain in force. School districts are to work with students and families to engage each student and promote attendance and/or participation as applicable, in accordance with KRS Chapter 159,



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applicable administrative regulations, and local board policies whether instruction is delivered in-person, remotely through NTI or a blended in-person and NTI model.

### **Daily Participation and Non-Traditional Instruction**

In order to document the engagement of students for the 2020-2021 school year, Kentucky school districts will record daily participation in Infinite Campus (IC) for all students in lieu of recording regular attendance. Districts will receive funding using either the 2019-2020 or 2018-2019 ADA as explained above, therefore daily attendance data will not be reported. However, as compulsory attendance is still required by law, districts must capture the participation of all students and be accountable for the delivery of instruction, whether in person in a school building or remotely through NTI.

Daily participation is the measure of the interactions between teachers and students. Those interactions will vary based on whether the student is learning in person or is participating remotely in instruction. Participation is a measure of a student's engagement in the instructional process. It is NOT a measure of the quality of student work. Grading practices determine quality. Participation will be recorded for each instructional day in the district calendar, but may be recorded on a weekly basis.

#### Students Participating In Person

Students who are learning in person will be considered “participating” by their presence in the classroom. As such, the existing requirements for recording attendance for in-person students found in 701 KAR 7:125E remain in effect.

#### Students Participating through NTI

The actual participation of students learning through NTI may be in real time during the school day, or at times outside of normal school hours, and so the measurement of the daily participation shall include at least one of the following:

1. One-on-one video communication or phone calls between teacher and student (or teacher and parent with smaller children or students with special needs);
2. Group video communication or phone calls between the teacher and a whole class or between a teacher and smaller groups of students within a class;
3. Student time logged into a learning management software system completing assignments; or
4. Submission of paper-based assignments for students in a non-digital, non-traditional setting.

The term non-traditional instruction (NTI) is an umbrella term for instruction that occurs in places other than the traditional classroom. It includes the official Non-Traditional Instruction



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Program outlined in KRS 158.070(9) and 701 KAR 5:150 that relate to school closures (NTI days) as well as any other day a student is receiving their instruction remotely.

### **Compulsory Attendance and Truancy**

KRS 159.010 requires each parent, guardian or other person residing in a school district and having custody or charge of any child (unless exempt under KRS 159.030) who has entered the primary school program or is between the ages of 6 and 18 to “send the child to a regular public day school” for the full term of the district in which the child resides or to the public school the district makes provisions for the child to attend. (KRS 159.010(1)(b)(1))

A student is exempt from compulsory attendance if the student already has graduated from high school, attends a private school or a private kindergarten-nursery school (less than 7 years old), cannot attend because of a physical or mental condition that renders inadvisable attendance at school, or attends a state-supported program for exceptional children. (KRS 159.030)

Truancy is set out in [KRS 159.150](#). A student subject to compulsory attendance is considered truant if “absent from school” without valid excuse for three or more days or tardy without valid excuse on three or more days. A student that has been reported truant two or more times is a habitual truant.

The statute provides that local school boards may establish policies that require students to comply with compulsory attendance laws, require truants and habitual truants to make up unexcused absences and impose sanctions for noncompliance. It also provides that local school districts may collaborate and cooperate with the Court of Justice, the Department for Community Based Services, the Department of Juvenile Justice, regional community mental health centers and other service providers to implement and utilize early intervention and prevention programs, such as truancy diversion, truancy boards, mediation and alternative dispute resolution to reduce referrals to a court-designated worker.

### **Duties of Director of Pupil Personnel**

Pursuant to KRS 159.080, every superintendent is required to appoint a director of pupil personnel (DPP). The duties of the DPP, as established in KRS 159.140, include enforcing student compulsory attendance. This includes attempting to visit student homes, ascertaining the causes of irregular attendance and truancy through documented contact with the custodian of the student, and seeking the elimination of these causes; securing the enrollment of all students who should be enrolled and keeping enrolled students in reasonably regular attendance; attempting to visit the homes of students who are reported to be in need of books, clothing or parental care; and providing for the interviewing of students and the parents of those students who quit school to determine the reasons for the decision.



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DPPs are vested with the powers of peace officers and may investigate in their district any case of nonattendance at school of any child of compulsory school age. They may, under the direction of the superintendent and the local board of education or the Kentucky Board of Education, institute proceedings against any person violating any provisions of the laws relating to compulsory attendance. (KRS 159.130)

In any action brought to enforce compulsory attendance laws, the director of pupil personnel or an assistant shall document the home conditions of the student and the intervention strategies attempted and may, after consultation with the court-designated worker, refer the case to the family accountability, intervention and response team (FAIR team). DPPs are encouraged to continue to conduct home visits where appropriate. In conducting such visits, DPPs should follow health and safety-related, and other applicable district guidelines for home visits. If entering a home is not possible due to the pandemic, DPPs should attempt to engage students and parents virtually or by telephone.

### Parents Responsible for Violations

Pursuant to KRS 159.180, every parent, guardian or custodian of a child residing in any school district in the state is legally responsible for any violation of the Chapter 159 compulsory attendance statutes by the child. Before any proceedings are instituted against the parent, guardian or custodian for violation of KRS 159.010 to 159.170, a written notice of the violation shall be served on the person by the DPP and one day shall be given for the termination of the violation. After such notice, if the violation is continued or if the provisions of KRS 159.010 to 159.170 are again violated during the school term by the child, no further notice shall be necessary and the parent or guardian shall be punishable as provided in KRS 159.990. A notice by certified mail, return receipt requested, or by personal service by the DPP shall be a legal notice.

### **Engagement and Enforcement Expectations**

As districts begin the 2020-2021 school year, whether in person or using an NTI remote instructional model, KDE expects that superintendents and DPPs will make all reasonable efforts to engage every student and enforce compulsory attendance laws and local board policies for the enrollment of all students who should be enrolled as well as keep enrolled students in reasonably regular attendance and participation. This includes truancy laws and policies, as well as directing parents to contact the court-designated worker to file complaints for “habitual runaway” and “beyond control of parent.”

Given that these are unusual times, superintendents and DPPs are encouraged to be creative and persistent in attempts to engage students, especially those learning remotely. This should include collaboration with Family Resource and Youth Services Center (FRYSC) Coordinators to assist in meeting the needs of children and families to overcome obstacles to student participation.



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Truancy considerations for students who are learning in person will be the same as in previous years. As discussed above, student participation for these students will be measured through student attendance. Accordingly, the student participation record will include a daily record of student absences and tardies.

For students learning remotely, student participation in lieu of in-person attendance will be documented as discussed above through student contact with their teacher, including student or parent video or phone calls, participation in group video or phone calls, teacher phone calls with a whole class or smaller groups of students within a class, student time logged into a learning management software system completing assignments or student submission of paper-based assignments for students in a non-digital, non-traditional setting. Participation will be recorded for each instructional day in the district database.

If a student is not physically present and learning in a school building, it does not mean the student is exempt from the compulsory attendance laws and policies. A student failing to participate without valid excuse for three (3) or more days shall be considered truant just as set out in KRS 159.150.

Districts should encourage and facilitate communication and collaboration between teachers, DPPs, FRYSC coordinators, and families.

Districts should encourage the establishment of teacher office hours. Teacher office hours may be used to communicate with parents and students and provide an opportunity for students whom the teacher or DPP has been unable to contact to provide evidence of participation. Districts may utilize classified staff under the supervision of the teacher to assist with teacher office hours and the documentation of student participation.

If a district uses classified staff to assist a teacher, the classified staff may make contact three days a week, with the actual teacher making contact on two days. DPPs should use available Infinite Campus (IC) reporting capabilities to identify students failing to participate. District should additionally consider using IC's Early Warning and Persistence to Graduation tools to help identify students at risk of dropping out. DPPs should document a student's lack of participation and all efforts to engage the student in the same manner as for a student learning in person.

For school year 2020-2021, local school boards are encouraged to examine and amend existing board policies where necessary to promote the attendance, engagement and participation of all students, especially students participating through remote learning.

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