

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 704 KAR 3:440. Primary school program guidelines.

6 RELATES TO: KRS 156.070, KRS 156.160(1)(a), KRS 158.030(2), KRS 158.031, KRS

7 158.305, KRS 158.791, KRS 158.6451, KRS 158.840, KRS 158.8402

8 STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), 158.031(2) [158.030(1)]

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board  
10 of Education to manage and control the common schools and all programs operated in the  
11 schools. KRS 156.160(1)(a) requires the Kentucky Board of Education [State Board for  
12 Elementary and Secondary Education] to establish by administrative regulation the standards  
13 that school districts shall meet in student, program service, and operational performance. KRS  
14 158.030(2) establishes the age requirements for students who may enter the primary school  
15 program. KRS 158.031(2) [KRS 158.030 establishes the primary school program and] requires  
16 the promulgation of administrative regulations to address methods for verifying successful  
17 completion of the primary school program in carrying out the goals of education as described  
18 in KRS 158.6451.

19 Section 1. Definitions. (1) "Authentic assessment" means assessment that occurs continually  
20 in the context of the learning environment and reflects actual learning experiences that can be

1 documented through observation, anecdotal records, journals, logs, actual work samples,  
2 conferences, and other methods. [The following definitions shall apply to this administrative  
3 regulation:

4 ~~(1) "Developmentally appropriate practices" means instructional practices that address the~~  
5 ~~physical, aesthetic, cognitive, emotional and social domains of children and that permit them to~~  
6 ~~progress through an integrated curriculum according to their unique learning needs.~~

7 ~~(2) "Multiage and multiability classrooms" means flexible grouping and regrouping of children~~  
8 ~~of different age, sex and ability who may be assigned to the same teacher(s) for more than one~~  
9 ~~(1) year.]~~

10 (2) [(3)] "Continuous progress" means a student's unique progression through the primary  
11 school program at his own rate without comparison to the rate of others or consideration of the  
12 number of years in school. Retention and promotion with the primary school program are not  
13 compatible with continuous progress.

14 (3) "Developmentally appropriate practices" means instructional practices that address the  
15 academic, physical, aesthetic, cognitive, emotional and social domains of children and that  
16 permit them to progress through an integrated curriculum according to their unique learning  
17 needs.

18 ~~[(4) "Authentic assessment" means assessment that occurs continually in the context of the~~  
19 ~~learning environment and reflects actual learning experiences that can be documented through~~  
20 ~~observation, anecdotal records, journals, logs, actual work samples, conferences and other~~  
21 ~~methods.]~~

22 (4) "Evidence-based" has the same meaning as 20 U.S.C. section 7801(21).

1 (5) "Multiage and multiability classrooms" means flexible grouping and regrouping of children  
2 of different age, sex and ability who may be assigned to the same teacher(s) for more than one  
3 (1) year.

4 ~~[(5) "Qualitative reporting methods" means progress is communicated through a variety of~~  
5 ~~home-school communiques, which address the growth and development of the whole child as~~  
6 ~~he progresses through the primary school program.~~

7 ~~(6) "Professional teamwork" means all professional staff in the primary school program~~  
8 ~~communicate and plan on a regular basis and use a variety of instructional delivery systems~~  
9 ~~such as team teaching and collaborative teaching.]~~

10 (6) [(7)] "Positive parent involvement" means the establishment of productive relationships  
11 between the school and the home, individuals, or groups that ~~[than]~~ enhance communication,  
12 promote understanding and increase opportunities for children to experience success in the  
13 primary school program.

14 (7) "Primary school program" has the same meaning as KRS 158.031(1).

15 (8) "Professional teamwork" means all professionals taff in the primary school program  
16 communicate and plan on a regular basis and use a variety of instructional delivery systems  
17 such as team teaching and collaborative teaching.

18 (9) "Qualitative reporting methods" means progress is communicated through a variety of  
19 qualitative methods which address the growth and development of the whole child as the  
20 student progresses through the primary school program.

21 Section 2. Primary School Program Attributes. (1) Each primary school program shall include  
22 all the following attributes:

23 (a) [(4)] Developmentally appropriate educational practices;

1 (b) [(2)] Multiage and multiability classrooms;

2 (c) [(3)] Continuous progress;

3 (d) [(4)] Authentic assessment;

4 (e) [(5)] Qualitative reporting methods;

5 (f) [(6)] Professional teamwork; and

6 (g) [(7)] Positive parent involvement.

7 Section 3. Students in the Primary School Program. (1) Eligible children, as defined in KRS

8 158.031(1), [Children] who attend the primary school program may advance through the

9 program without regard to age or [shall not be described as enrolled in] a specific grade level.

10 Students who transfer from a school system that uses grade levels of kindergarten through

11 third grade shall be enrolled in the primary school program and placed according to their

12 developmental needs.

13 (2) Each elementary school shall design the primary school program to address the learning

14 needs of all children who meet the entry age for the primary school program and who are not

15 ready to enter the fourth grade. Individual placement decisions for children who are eligible for

16 special education and related services shall be determined by the appropriate admissions and

17 release committee, pursuant to 707 KAR 1:320 [707 KAR 1:051].

18 Section 4. Curriculum. (1) The curriculum of the primary school program shall address the

19 goals of education and the model curriculum framework set forth in KRS 158.6451, meet the

20 requirements set forth in KRS 158.791, and include evidence-based high-quality instructional

21 resources for mathematics and reading that is determined by the Kentucky Department of

22 Education to be reliable, valid, and aligned to the Kentucky academic standards as provided in

23 704 KAR Chapter 8 and required in KRS 158.305 and KRS 158.8402.

1 (2) Instructional practices in the primary school program shall motivate and nurture children of  
2 diverse cultures; shall address the academic, social, emotional, physical, aesthetic and  
3 cognitive needs of children; and shall be based upon evidence-based instruction, intervention,  
4 and supports and the following principles of how young children learn:

5 (a) Young children learn at different rates and through different styles.

6 (b) Young children learn as they develop a sense of self-confidence in a positive learning  
7 environment;[-]

8 (c) Young children learn best with "hands on" experiences where they are encouraged to  
9 question, explore and discover;[-]

10 (d) Young children learn best through an integrated curriculum by engaging in real-life activities  
11 and learning centers; and[-]

12 (e) Young children learn best in a social environment where they can converse with others to  
13 expand their language and their thinking.

14 (3) Students enrolled in the primary school program shall progress through the curriculum at  
15 their individual learning rates.

16 (4) Methods for verifying successful completion of the primary school program shall be  
17 determined by using strategic data-based decision making within a comprehensive screening  
18 and assessment system.

19 (5) [(4)] Parents and legal guardians of children enrolled in the primary school program shall  
20 receive regular reports at a minimum of four (4) times per year regarding the children's  
21 individual progress in meeting the goals of education set forth in KRS 158.6451(1) and  
22 successful completion of the primary school program.

1 ~~[Section 5. Implementation. (1) By June 15, 1992, each elementary school shall submit an~~  
2 ~~action plan to the Department of Education describing the steps to be taken for beginning~~  
3 ~~implementation in 1992-93 and full implementation by 1993-94 in order to implement the~~  
4 ~~primary school program as described in this administrative regulation. The procedures and~~  
5 ~~instructions for the plan are contained in "Procedures for Developing the Primary Program~~  
6 ~~Action Plan," effective date of April 1992, which is hereby incorporated by reference. This~~  
7 ~~document may be inspected, copied, and obtained at the Kentucky Department of Education,~~  
8 ~~Division of Early Childhood, 21st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort,~~  
9 ~~Kentucky 40601, Monday - Friday, 8 a.m. - 4:30 p.m.~~  
10 ~~(2) Beginning June 1, 1993, each elementary school shall submit an annual evaluation report~~  
11 ~~to the Department of Education describing the steps to be taken to improve the quality of the~~  
12 ~~primary school program. The evaluation report shall follow the format contained in "Procedures~~  
13 ~~for Developing the Primary Program Action Plan" document cited in subsection (1) of this~~  
14 ~~section.~~  
15 ~~(3) The action plan and subsequent evaluation reports shall include input from parents,~~  
16 ~~teachers and support staff of children enrolled in the primary school program. The action plan~~  
17 ~~and subsequent evaluation reports shall be adopted by the school-based decision making~~  
18 ~~council if one exists, or by the local district superintendent if the school does not have a~~  
19 ~~council.~~  
20 ~~(4) Each elementary school shall make the action plan and subsequent evaluation reports~~  
21 ~~available for public inspection. A copy of the action plan and subsequent evaluation reports~~  
22 ~~shall be kept on file by the local school district superintendent.]~~

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)

\_\_\_\_\_  
Dr. Robbie Fletcher  
Commissioner of Education

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Sharon Porter Robinson, Chair  
Kentucky Board of Education

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this proposed administrative regulation shall be held October 23, 2025 at 10:00 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays 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 cancelled. 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 through October 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5<sup>th</sup> 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

704 KAR 3:440

Contact Person: Todd G. Allen

Phone: 502-564-4474

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

Subject Headings: Board of Education, Schools, Compliance

(1) Provide a brief summary of:

(a) What this administrative regulation does: 704 KAR 3:440 provides guidelines for schools and districts to address methods for verifying successful completion of the primary school program.

(b) The necessity of this administrative regulation: KRS 156.070(1) requires the Kentucky Board of Education (KBE) to manage and control the common schools and all programs operated in the schools. KRS 156.160(1) requires the KBE to promulgate an administrative regulation establishing standards that schools and districts shall meet in student, program, service, and operational performance. KRS 158.031(2) requires the KBE to promulgate administrative regulation addressing the methods for verifying successful completion of the primary school program in carrying out the goals of education as described in KRS 158.6451. This administrative regulation implements that duty relative to the primary school program attributes, eligible students, curriculum, instructional strategies and methods for determining successful completion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070(1) requires the Kentucky Board of Education (KBE) to manage and control the common schools and all programs operated in the schools. KRS 156.160(1) requires the KBE to promulgate an administrative regulation establishing standards that schools and districts shall meet in student, program, service, and operational performance. KRS 158.031(2) requires the KBE to promulgate administrative regulation addressing the methods for verifying successful completion of the primary school program in carrying out the goals of education as described in KRS 158.6451.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists schools and districts by providing guidelines and methods for verifying successful completion of the primary school program for students prior to entrance into fourth grade. Amendments to the regulation also provide alignment to updated statutory requirements that impact the primary school 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: 704 KAR 3:440 requires amendments to reflect accurate statutory and regulatory language and references as currently provided in law. Amendments to Section 1 provide updated definitions to conform to current statute governing instruction for students prior to entrance into fourth grade in addition to drafting requirements provided under KRS Chapter 13A. Amendments to Section 3 are non-substantive in nature and align to KRS 158.031. Amendments to Section 4 align to current

statutory requirements for reading and mathematics instruction as provided in KRS 158.305, KRS 158.791, KRS 158.840 and KRS 158.8402. Amendments to Section 5 remove outdated burdensome reporting for schools and districts that is not statutorily required.

(b) The necessity of the amendment to this administrative regulation: To avoid expiration, KRS 13A.3104(1)(a) requires the KBE to review the regulation in its entirety for compliance with current law governing the subject matter of the administrative regulation. Upon review of 704 KAR 3:440, amendments were identified in order to conform to current statutory requirements which impact students enrolled in the primary school program.

(c) How the amendment conforms to the content of the authorizing statutes: 704 KAR 3:440 requires amendments to accurately reflect statutory and regulatory language and references as currently provided in law. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools. KRS 156.160(1) requires the KBE to promulgate an administrative regulation establishing standards that schools and districts shall meet in student, program, service, and operational performance. KRS 158.031 requires the KBE to promulgate administrative regulation addressing the methods for verifying successful completion of the primary school program in carrying out the goals of education as described in KRS 158.6451. Amendments to Section 1 provide updated definitions to conform to current statute governing instruction for students prior to entrance into fourth grade in addition to drafting requirements provided under KRS Chapter 13A. Amendments to Section 3 are non-substantive in nature and align to KRS 158.031. Amendments to Section 4 align to current statutory requirements for K-3 reading and mathematics instruction as provided in KRS 158.305, KRS 158.791, KRS 158.840 and KRS 158.8402.

(d) How the amendment will assist in the effective administration of the statutes: The amendments allow schools and districts to reference language provided within that aligns with current statutory requirements as it relates to the methods for verifying successful completion of the primary school program.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? Yes, this administrative regulation aligns to Senate Bill 9 (2022) and HB 162 (2024).

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Schools and districts are affected by this administrative regulation.

(5) 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 entities identified above in question (3) are not required to take any further action. To avoid expiration, KRS 13A.3104(1)(a) requires the KBE to review the regulation in its entirety for compliance with current law governing the subject matter of the administrative regulation. Upon review of 704

KAR 3:440, amendments were identified in order to conform to current statutory requirements which impact students enrolled in the primary school program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Local schools and districts will not be impacted by any additional costs as a result of the amendments to 704 KAR 3:440.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local schools and districts benefit from 704 KAR 3:440 as it provides guidelines and methods for verifying successful completion of the primary school program in carrying out the goals of education as described in KRS 158.6451. The amendments provide schools and districts with accurate alignment to related statutes that have been recently updated, including KRS 158.305, KRS 158.791, KRS 158.840 and KRS 158.8402.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There are no initial costs anticipated to the Kentucky Department of Education in implementing the administrative regulation except in cases where technical assistance is requested by schools and districts.

(b) On a continuing basis: There are no continuing costs anticipated to the Kentucky Department of Education in implementing the administrative regulation except in cases where ongoing technical assistance is requested by schools and districts.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State and district funds.

(8) 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: There will be no increase in fees and additional funding will not be necessary to implement the amendments to the administrative regulation.

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

(10) TIERING: Is tiering applied? Tiering was not appropriate as the administrative regulation applies equally to all schools and districts operating a primary school program.

## FISCAL IMPACT STATEMENT

704 KAR 3:440

Contact Person: Todd G. Allen

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Email: todd.allen@education.ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 156.070, 156.160(1), KRS 158.030(2), KRS 158.031(2), KRS 158.305, KRS 158.791, KRS 158.6451, KRS 158.840 and KRS 158.8402.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: KRS 156.070(1) requires the Kentucky Board of Education (KBE) to manage and control the common schools and all programs operated in the schools. KRS 156.160(1) requires the KBE to promulgate an administrative regulation establishing standards that schools and districts shall meet in student, program, service, and operational performance. KRS 158.031(2) requires the KBE to promulgate administrative regulation addressing the methods for verifying successful completion of the primary school program in carrying out the goals of education as described in KRS 158.6451.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: KBE and Kentucky Department of Education (KDE).

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: Any expenditures are expected to be minimal.

For subsequent years: Any expenditures are expected to be minimal.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: No cost savings are anticipated.

For subsequent years: No cost savings are anticipated.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local schools and districts.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: There are no expected costs to schools and districts in the first year as a result of the amendments to the regulation.

For subsequent years: There are no expected costs to schools and districts in subsequent years as a result of the amendments to the regulation.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: No cost savings are anticipated.

For subsequent years: No cost savings are anticipated.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year: Not applicable.

For subsequent years: Not applicable.

2. Revenues:

For the first year: Not applicable.

For subsequent years: Not applicable.

3. Cost Savings:

For the first year: Not applicable.

For subsequent years: Not applicable.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: For the KDE, any expenditures are expected to be minimal. The regulation is not expected to generate revenue and no cost savings are anticipated.

(b) Methodology and resources used to reach this conclusion: For the KDE and local school districts, there are no amendments to 704 KAR 3:440 that would result in new costs. Regulatory amendments conform to statutes which are already established in law and have been implemented by local schools and districts.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(13): The administrative regulation is not expected to have a major economic impact on the KDE or local schools and districts.

(b) The methodology and resources used to reach this conclusion: For the KDE and local school districts, there are no amendments to 704 KAR 3:440 that would result in a major

economic impact. Regulatory amendments conform to statutes which are already established in law and have been implemented by local school and districts.