

FILED WITH LRC
TIME: 3:45 pm
AUG 11 2021
Emily B Caudill
REGULATIONS COMPILER

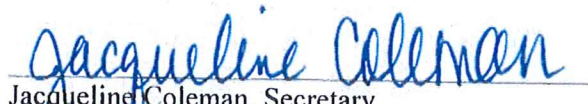
Statement of Emergency

702 KAR 1:191E

This emergency administration regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, welfare, or the environment. The regulation is necessary to mitigate the spread of COVID-19 in Kentucky public schools, specifically by providing quarantine leave to school district employees during the 2021-2022 school year. Due to promulgation time, an ordinary regulation would not be effective for the majority of the upcoming school year resulting in potential hardship to school districts and quarantined employees. As the school year begins and COVID-19 cases are on the rise again, school districts currently lack the ability to provide leave to employees placed on quarantine due to COVID-19 exposure. This regulation authorizes local school districts, to provide quarantine leave to full and part-time employees placed on quarantine by a medical provider, health department or by the school district. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Pursuant to KRS 13A.190, the administrative agency submitted documentary evidence at the time of filing this emergency regulation which shows the increase in COVID-19 cases among Kentuckians between June 1, 2021 and July 31, 2021, as well as its obligation to promulgate a regulation pursuant to KRS 156.160.



Andy Beshear, Governor



Jacqueline Coleman, Secretary
Education and Workforce Development Cabinet

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET
2 Kentucky Board of Education
3 Department of Education
4 (New Emergency Administrative Regulation)
5 702 KAR 1:191E. District Employee Quarantine Leave.
6 RELATES TO: KRS 156.070, 156.160, 160.290
7 STATUTORY AUTHORITY: KRS 156.070, 156.160
8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board
9 of Education to promulgate administrative regulations establishing standards which school
10 districts shall meet in student, program, service, and operational performance, including
11 regulations for the protection of the physical welfare and safety of public school children, as well
12 as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides
13 the Kentucky Board of Education with the management and control of the common schools and
14 all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local
15 boards of education which are deemed to be for services rendered for the benefit of the common
16 schools. This administrative regulation establishes paid quarantine leave to employees in
17 response to the COVID-19 emergency. This emergency regulation is necessary to address the
18 imminent threat to public health, safety, and welfare; and to protect human health; while safely
19 and efficiently operating public schools during the 2021-22 school year in light of the COVID-19
20 public health emergency.

1 Section 1. COVID-19 Quarantine Leave. (1) During the 2021-22 school year, each district board
2 of education shall provide each eligible person employed as a full or part-time employee in the
3 public schools paid leave during the period the employee is placed in quarantine due to exposure
4 to COVID-19. Exposure to COVID-19 shall include exposure to any variant of COVID-19. This
5 leave shall be in addition to any other leave provided by statute or board policy.

6 (2) In order to be eligible for leave under this section, the employee shall:

7 (a) Be placed in quarantine due to COVID-19 exposure by a treating medical professional, a
8 public health department, the Department for Public Health, or the school district for which the
9 employee works; and

10 (b) Have received a COVID-19 vaccination prior to the quarantine period, present a statement
11 from a treating medical professional that a disability prevents the employee from taking the
12 COVID-19 vaccine, or is prevented from taking the COVID-19 vaccination based on sincerely
13 held religious belief.

14 (3) If a school district places an employee on quarantine due to exposure to COVID-19, then the
15 district shall provide the employee with written documentation supporting the quarantine
16 determination.

17 (4) A school district may require the employee to provide written documentation from the entity
18 placing the employee in quarantine due to COVID-19 exposure.

19 (5) Quarantine leave shall not be used if the employee has an active COVID-19 infection.

20 (6) A school district, at its discretion, may determine quarantine leave is unnecessary when an
21 employee can fulfill his or her job duties remotely during the quarantine period.

22 (7) In order to shorten the quarantine period, a school district may require an employee on
23 quarantine leave to undergo a COVID-19 test at district expense and provide the results to the

1 district. Such test shall occur no sooner than the earliest date recommended by Centers for
2 Disease Control (CDC) and Department for Public Health quarantine guidelines. A district may
3 require an employee testing negative for COVID-19 to return to work in accordance with CDC
4 and Department for Public Health quarantine guidelines.

5 (8) Leave granted pursuant to this section shall not accumulate or carry over beyond the 2021-
6 2022 school year and shall not be transferrable to any other classification of paid leave
7 established by KRS 161.155, KRS 161.154, or local school district policy.


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).

August 9, 2021
(Date)



Jason E. Glass, Ed.D.
Commissioner & Chief Learner

August 9, 2021
(Date)



Lu Young, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 30, 2021, at 10:30 am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) 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 through September 30, 2021.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

702 KAR 1:191E

Contact Person: Todd G. Allen, Todd.allen@education.ky.gov

Phone Number: 502-564-4474

(1) Provide a brief summary of:

(a) What this administrative regulation does:

The proposed emergency regulation is only applicable to the 2021-2022 school year. Under existing law, local school districts may not have a mechanism to provide leave to employees in quarantine due to the COVID-19 pandemic. The proposed emergency regulation establishes paid leave for employees placed in quarantine by a medical provider, a health department or by the school district.

(b) The necessity of this administrative regulation:

As the 2021-2022 school year quickly approaches and with COVID-19 rates increasing, school districts may be without ability to provide leave to employees placed in quarantine due to COVID-19 exposure. As such, school district employees may be faced with the situation of being absent without leave in order to comply with a quarantine order.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for:

The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine.

This regulation establishes the leave requirements for quarantine due to COVID-19.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation establishes the leave requirements for quarantine due to COVID-19 pursuant to KRS 156.160(1)(l).

(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. This is a new regulation.

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

N/A.

(c) How the amendment conforms to the content of the authorizing statutes:

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:

Local school districts, local school district employees.

(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:

For school year 2021-2022, this administrative regulation requires school districts to provide leave for employees subject to quarantine due to the COVID-19 pandemic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

School districts would incur some indeterminable costs in providing paid leave to employees. Cost will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Districts will be able to provide employees with leave when the employee is required to quarantine due to COVID-19 exposure. Districts currently cannot provide leave for quarantined employees beyond sick leave. This allows school districts to operate more safely and mitigate COVID-19 exposure risks in schools.

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

(a) Initially:

The cost of the program is indeterminable and will depend on the numbers of employees placed in quarantine due to the COVID-19 pandemic and the cost to obtain substitute services where appropriate.

(b) On a continuing basis:

This regulation is only applicable to the 2021-2022 school year and is in response to the COVID-19 pandemic.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

General and Federal COVID-19 relief funds (e.g. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRSSA) Act, and the American Rescue Plan (ARP) Act).

(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 additional fees or funding are anticipated to implement this regulation. However, costs are largely dependent on the number of COVID-19 quarantined employees during school year 2021-2022.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees associated with this regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 702 KAR 1:191E

Contact Person: Todd G. Allen, Todd.allen@education.ky.gov

Phone Number: 502-564-4474

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 school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for:
The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine.

KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate regulations for:
[T]he protection of the physical welfare and safety of the public school children.

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.

School districts would incur some indeterminable costs in providing paid leave to employees. Cost will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

(a) 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?

This regulation will not generate revenue.

(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?

This regulation is only applicable to the 2021-2022 school year. It will not generate revenue.

(c) How much will it cost to administer this program for the first year?

The cost to administer this program during school year 2021-2022 is indeterminable.

(d) How much will it cost to administer this program for subsequent years?

This regulation is only applicable to the 2021-2022 school year. School districts would incur some indeterminable cost in providing paid leave to employees. Costs will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

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

Revenues (+/-): N/A

Expenditures (+/-): Unknown

Other Explanation:

Specific dollar estimates cannot be determined. The cost of the program is indeterminable and will depend on the numbers of employees placed in COVID-19 quarantine during the 2021-2022 school year and costs related to obtaining substitute employees where appropriate.

KRS 13A.190(1) Documentary Evidence for
702 KAR 1:191E District Employee Quarantine Leave

The below graph was provided by the Kentucky Department for Public Health (DPH) and displays daily new COVID-19 cases for Kentuckians from June 1, 2021 through July 31, 2021. The graph shows the increase in COVID-19 cases for that age group. Please note the dip in cases on the graph corresponds with weekends when testing results are less available. The graph is consistent with rising case numbers overall as reported by DPH. For example on June 1, 2021, DPH reported 137 new COVID-19 cases in Kentucky, while on July 31, 2021, there were 1571 new cases. Rising COVID-19 cases increases the likelihood of exposure and transmission of the disease, and therefore, the necessity to quarantine and isolate those exposed and infected. For school year 2021-2022, this may translate into large numbers of school staff subject to quarantine, and thus, not able to receive in-person instruction.

Case Counts - June 1st to August 1st*

Includes cases of all ages**



156.160 Promulgation of administrative regulations by Kentucky Board of Education -- Voluntary compliance -- Penalty.

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453 and distributed to local school districts and schools. The administrative regulations shall provide that:

1. If a school offers American sign language, the course shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;
2. If a school offers the Reserve Officers Training Corps program, the course shall be accepted as meeting the physical education requirement for high school graduation notwithstanding other provisions of law; and
3. Every public middle and high school's curriculum shall include instruction on the Holocaust and other cases of genocide, as defined by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, that a court of competent jurisdiction, whether a court in the United States or the International Court of Justice, has determined to have been committed by applying rigorous standards of due process;

(b) Courses of study or educational experiences available to students in all middle and high schools to fulfill the prerequisites for courses in advanced science and mathematics as defined in KRS 158.845;

(c) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(d) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. The minimum requirements shall not include achieving any postsecondary readiness indicator as described in KRS 158.6455 or any minimum score on a statewide assessment administered under KRS 158.6453. Student scores from any assessment administered under KRS 158.6453 that are determined by the department's technical advisory committee to be valid and reliable at the individual level shall be included on the student transcript. The department's technical advisory committee shall submit its determination to the commissioner of education and the Legislative Research Commission;

(e) The requirements for an alternative high school diploma for students with disabilities whose individualized education program indicates that, in accordance with 20 U.S.C. sec. 1414(d)(1)(A):

1. The student cannot participate in the regular statewide assessment; and
2. An appropriate alternate assessment has been selected for the student based upon a modified curriculum and an individualized course of study;

(f) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(g) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(h) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his or her initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(i) A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a three (3), four (4), five (5), or six (6) year-old child is enrolled in a public school, public preschool, or Head Start program;

(j) 1. Beginning with the 2010-2011 school year, a dental screening or examination by a dentist, dental hygienist, physician, registered nurse, advanced practice registered nurse, or physician assistant that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a dental screening or examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a five (5) or six (6) year-old child is enrolled in a public school.

2. A child shall be referred to a licensed dentist if a dental screening or examination performed by anyone other than a licensed dentist identifies the possibility of dental disease;

(k) The transportation of children to and from school;

(l) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(m) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(n) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts;

(o) The disposal of real and personal property owned by local boards of education; and

(p) The development and implementation of procedures, for all students who are homeless children and youths as defined in 42 U.S.C. sec. 11434a(2), to do the following:

1. Awarding and accepting of credit, including partial credit, for all coursework satisfactorily completed by a student while enrolled at another school;
2. Allowing a student who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year;
3. Awarding a diploma, at the student's request, by a district from which the student transferred, if the student transfers schools at any time after the completion of the student's second year of high school and the student is ineligible to graduate from the district to which the student transfers, but meets the graduation requirements of the district from which the student transferred; and
4. Exempting the student from all coursework and other requirements imposed by the local board of education that are in addition to the minimum requirements for high school graduation established by the Kentucky Board of Education pursuant to paragraph (d) of this subsection in the district to which the student transfers, if the student transfers schools at any time after the completion of the student's second year of high school and the student is ineligible to graduate both from the district to which the student transfers and the district from which the student transferred.

(2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.

(b) The following shall not be subject to waiver:

1. Administrative regulations relating to health and safety;
2. Administrative regulations relating to civil rights;
3. Administrative regulations required by federal law; and
4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

(4) Any public school that violates the provisions of KRS 158.854 shall be subject to a penalty to be assessed by the commissioner of education as follows:

(a) The first violation shall result in a fine of no less than one (1) week's revenue from the sale of the competitive food;

(b) Subsequent violations shall result in a fine of no less than one (1) month's revenue from the sale of the competitive food;

(c) "Habitual violations," which means five (5) or more violations within a six (6) month period, shall result in a six (6) month ban on competitive food sales for the violating school; and

(d) Revenue collected as a result of the fines in this subsection shall be transferred to the food service fund of the local school district.

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 79, sec. 2, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 112, sec. 3, effective July 15, 2020. -- Amended 2019 Ky. Acts ch. 144, sec. 1, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 60, sec. 1, effective July 14, 2018. -- Amended 2017 Ky. Acts ch. 80, sec. 10, effective June 29, 2017; and ch. 177, sec. 9, effective June 29, 2017. -- Amended 2012 Ky. Acts ch. 27,