

***INCLUSION OF
SPECIAL POPULATIONS***

***IN THE STATE-REQUIRED ASSESSMENT AND ACCOUNTABILITY
PROGRAMS
703 KAR 5:070***

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INTRODUCTION, BACKGROUND, AND PURPOSE

According to KRS 158.6455, it is the intent of the General Assembly that schools succeed with all students. The state-required Assessment and Accountability Programs is inclusive of all students at specific grade levels. The Disabilities and Diversity Advisory Committee, which includes teachers, school administrators, university representatives, advocacy representatives, and members of the Department of Education, was established at the beginning of the test development process to consider issues related to the inclusion of special populations in the state-required Assessment and Accountability Programs. The conclusions and advice of the Committee were incorporated in this document.

The purpose of this document is to provide direction for the inclusion of special populations in the state-required Assessment and Accountability Programs. These populations include:

- students with disabilities
- students who attend schools classified as A2 through A6 schools as defined in 703 KAR 5:040 and state agency children as provided in 905 KAR 7:250
- students whose primary language is not English
- students receiving instruction in home/hospital settings as specified in 704 KAR 7:120 (i.e., homebound instruction, not home schools)
- students who have temporary medical conditions that necessitate accommodations or modifications or both for participation

Section 6 provides conditions for implementing accommodations or modifications or both for students participating in the state-required Assessment and Accountability Programs.

STUDENT INCLUSION

The provisions in this document are applicable to all students except those who are:

- twenty-one (21) years of age or older who are part time students attending less than six (6) hours per day. (see Section 1, B.2)
- enrolled in an Adult General Education Diploma (GED) Program and are not officially enrolled in a Kentucky public high school. These students are considered dropouts for accountability purposes, and therefore, are not subject to the inclusion policies described in this document. Students enrolled in a Secondary GED Program offered by a Kentucky public high school are not considered to be dropouts for accountability purposes, and therefore, are subject to the inclusion policies described in this document.

SUMMARY OF THE STANDARDS FOR INCLUSION OF SPECIAL POPULATIONS

- All students with disabilities shall participate in the state-required Assessment and Accountability Programs.
- A small percentage of students with disabilities shall participate in the Alternate Portfolio Assessment Program. These students are generally those who have moderate to severe

cognitive disabilities and represent one (1) to two (2) percent of the total student population. (The Alternate Portfolio Assessment Program was implemented in the 1992-1993 school year.)

• Each school shall assess all students with limited English proficiency enrolled on the first day of the testing window (see page 10, SECTION 3 - INCLUSION OF STUDENTS WHOSE PRIMARY LANGUAGE IS NOT ENGLISH for specifics of assessment and accountability and for exceptions applicable to LEP students during their first year of enrollment in a United States school.)

• Students receiving instruction in home/hospital settings shall participate in the state-required Assessment and Accountability Programs unless participation in the state required assessment would jeopardize a student's physical, mental or emotional well being and a school or district has submitted a request for medical exemption, which is subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from all or portions of the assessments.

SECTION 1 - INCLUSION OF STUDENTS WITH DISABILITIES

Students with disabilities are students who meet the criteria under KRS157.200 and Kentucky Administrative Regulations (707 KAR Chapter 1) related to Exceptional Children or Section 504 of the Rehabilitation Act of 1973. These federal and state laws and regulations apply to all subsequent sections referencing students with disabilities.

A. Three Options for Inclusion

A student's Individual Education Program (IEP) or 504 Plan should be written for a calendar year with the Admissions and Release Committee (ARC) or 504 Committee considering adjustment periods for adding or deleting accommodations or modifications or both. For students with disabilities, the ARC or 504 Committee shall determine on an individual basis how the student will be included in the state-required Assessment and Accountability Programs. The decision of the Committee shall be stated in the student's IEP or 504 Plan. The three options for inclusion shall include:

1. Participation with no accommodations or modifications

Students with disabilities who participate fully in the state-required Assessment and Accountability Program with no accommodations or modifications shall include:

- students who have been referred to an Admissions and Release Committee or a 504 Committee and the evaluation process and eligibility determination have not been completed; or
- students with disabilities not receiving special education and related services or accommodations and interventions under Section 504.

2. Participation with accommodations or modifications or both

Students who:

- a. meet the eligibility criteria for one of the disability categories under the Kentucky Administrative Regulations Related to Exceptional Children;
- b. have a current Individual Education Program (IEP); and
- c. are receiving specially designed instruction and related services may use accommodations or modifications or both for the state-required Assessment under the following three conditions:

- 1) Accommodations or modifications or both shall be a part of the student's regular instructional routine and are not used or introduced just for the purpose of the state-required Assessment;
- 2) Accommodations or modifications shall be related to the individual student's needs and the impact of the disability on specific areas of learning. Decisions concerning the use of accommodations or modifications or both shall be supported by evaluation information and the IEP (the student's present level of performance, specific goals and objectives, specially designed instruction, related services or supplementary aids and services) as necessary for the student to access the general education curriculum; and
- 3) Accommodations or modifications or both are specified in the student's IEP.

Students who meet the eligibility criteria in Section 504 of the Rehabilitation Act of 1973 for having a physical or mental disability which substantially limits one or more major life activities (i.e., learning) and have a current 504 Plan may use accommodations for the state-required Assessment under the following three conditions:

- accommodations or modifications or both are part of the student's regular instructional routine and are not used or introduced just for the purpose of the state-required Assessment;
- accommodations or modifications or both are related to the individual student's needs and the impact of the disability on specific areas of learning. The decision to allow these accommodations or modifications or both shall be supported by evaluation information and instructional planning for the targeted areas of need as necessary for the student to access the general education curriculum; and

- accommodations or modifications or both are specified in the student's 504 Plan as part of interventions and modifications.

Physical or mental impairments are defined in Section 504 of the Rehabilitation Act of 1973 implementing regulations (104.3(h)) as:

- (a) "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Examples of conditions that meet this definition are orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; specific learning disabilities; and kidney and liver disease.

Staff in each school district shall refer to the local district's policies and procedures for implementing the requirements under Section 504 related to evaluation, determination of eligibility, and provision of services.

3. Participation in the Alternate Portfolio Assessment Program

To participate in the Alternate Portfolio Assessment Program, a student shall meet all the criteria for the certificate program as stated in 707 KAR Chapter 1 related to Exceptional Children and the Program of Studies (704 KAR 3:303).

The Admissions and Release Committee for the student with disabilities shall:

- A. determine and verify in the student's Individual Education Program (IEP) that the student meets all of the criteria for the certificate program in order to participate in the Alternate Portfolio Assessment Program;
- B. document in writing in the student's record the basis for the decision using current and longitudinal data such as the following:
 - performance data across multiple settings;
 - behavior observations in multiple settings;
 - adaptive behavior; and continuous assessment of progress on IEP goals/objectives; and
- C. review annually this decision in accordance with 707 KAR Chapter 1

The results of each student's Alternate Portfolio Assessment shall be included ~~count~~ in the accountability calculations to determine the school's performance judgment and be equivalent to the impact of a student participating in the regular state-required Assessment and Accountability Programs process.

B. Determining Age for Completion of Alternate Portfolio

Students who participate in the Alternate Portfolio Assessment Program shall submit a completed Alternate Portfolio once each at the elementary, middle, and high school levels. These Alternate Portfolio scores shall be included in the Accountability data. The elementary portfolio shall be completed at the fourth grade, but no later than the school year in which the student is eleven (11) years old on October 1st. The middle school portfolio shall be completed at the eighth grade, but no later than the school year in which the student is fifteen (15) years old on October 1st. The high school portfolio shall be completed during the student's last anticipated full year of school.

C. Students with Disabilities in Non-Graded Programs Who Do Not Participate in the Alternate Portfolio Assessment Program

Students with disabilities in non-graded programs who do not participate in the Alternate Portfolio Assessment Program shall be required to participate in the state-required Assessment and Accountability Programs at their present appropriate grade assignment with instructionally appropriate accommodations or modifications or both as determined by the student's ARC or 504 Committee. These accommodations or modifications or both shall be documented in each student's IEP or 504 Plan since the same kinds of instructional accommodations and modifications as specified in the student's IEP or 504 Plan are permitted on each of the accountability assessment components and norm-referenced assessments.

D. Inclusion of Twenty-one (21) Year Old Students with Disabilities in the Assessment Program

If a student with disabilities turns twenty-one (21) years old during a school year, the student may "age out" of school without completing the school year and participating in the state-required Assessment and Accountability Programs (e.g., a student exits school after becoming 21 years old in January). If this is a possibility, the student shall be included in the assessment during the school year prior to turning 21 years old.

E. Inclusion of Students with Disabilities Who Skip a Grade

If a student is assigned to a higher grade that results in skipping a grade within the accountability system, the student like a student without disabilities shall still participate in the assessment components associated with the grade being passed through (i.e., students participate in all elementary, middle, and high school assessment components).

F. Inclusion of Students with Disabilities in the Measure of the Percentages of Students Making Successful Transitions to Adult Life

With the exception of students who participate in the Alternate Portfolio Assessment Program, schools that serve students with disabilities shall be held accountable for these

students' successful transition to adult life using the same standards applied to calculate this non-academic indicator for all other students.

Students who participate in the Alternate Portfolio Assessment may be considered to have made successful transitions to adult life if they:

1. make a successful transition to adult life as defined for the regular population of students;
2. enroll as a full- or part-time student (no less than ten (10) hours per week), at a post secondary vocational school or adult education program preparing students for integrated work;
3. work in an integrated setting (for at least ten (10) hours per week) where the majority of workers are not disabled; or
4. participate in supported employment.

Students transitioning to community rehabilitation programs shall be considered successful if the post-secondary training or employment takes place in an integrated environment.

SECTION 2 - INCLUSION OF STUDENTS IN SCHOOLS CLASSIFIED AS A2 THROUGH A6 AND STATE AGENCY CHILDREN

A2 through A6 Schools

Students attending schools classified as "A2 through A6" as provided in 703 KAR 5:040 shall be included in the overall accountability program. These students' scores shall be tracked back to the A1 schools that would have served them on the specified date for establishing accountability rosters had they not required services offered by the A2-A6 schools they attend.

The Kentucky School for the Deaf and the Kentucky School for the Blind are comparable to an A3 school classification and shall be treated as such. A local school and district shall be accountable for a student in their service areas attending these schools and shall be responsible for providing input into each student's IEP designed to meet the needs of the individual student in accordance with Kentucky Administrative Regulations for Exceptional Children (707 KAR Chapter 1).

If an "A1" school operates programs for special populations from outside the school's normal service area, then the A1 school serving the students may request that assessment results of these students be attributed to the "sending A1" school. The decision whether to request that assessment results be attributed to the "sending" school shall be consistent over a given Accountability Cycle. If a change is implemented at the local level the Kentucky Department of Education shall be notified and the affected goal lines and assistance lines shall be adjusted appropriately. The Department shall be notified prior to July 1 of the first year of the biennium impacted. This transfer of data may be applied to programs such as vocational- technical, special education, alternative, and gifted and talented programs.

State Agency Children

“State agency children” shall have the same assessments administered as other public school youth in A5 and A6 schools as specified in 703 KAR 5:040. The results of the assessments shall be included in the accountability index of the last A1 school the youth attended prior to admittance to a state agency program or the A1 school the youth would have attended if the youth had remained in that local school district.

“State agency children” shall develop portfolios consistent with the content requirements of the state’s assessment program. A state agency child’s portfolio shall be sent to the receiving school as part of the educational records when youth transition from the state agency program.

SECTION 3 - INCLUSION OF STUDENTS WHOSE PRIMARY LANGUAGE IS NOT ENGLISH

For purposes of this document, students whose primary language is not English shall include students with limited English proficiency as defined in 703 KAR 5:001. For purposes of calculating a school or district’s academic indices and for determining adequate yearly progress in the federal dimension of the state’s accountability program, schools and districts shall for two years maintain in the subgroup of students with limited English proficiency students who have attained English proficiency based on a state-approved English language proficiency assessment in conjunction with professional judgment. However, when determining whether the subgroup of students with limited English proficiency meets the state-defined minimum group size, these students who have attained English proficiency shall not be required to be counted as students with limited English proficiency.

Part One: State-Required Assessment and Accountability Programs

Each school shall assess all students with limited English proficiency enrolled on the first day of the testing window in all parts of the state-required assessments and their scores shall be included in accountability calculations consistent with state law, unless the students are in their first year of enrollment in a United States school.

Students with limited English proficiency in the first year of enrollment in a United States school shall be required to take an English language proficiency assessment and, if the student enrolls in a grade in which a NCLB-required mathematics test is administered, the state-required mathematics assessment with accommodations or modifications or both as appropriate.

All students with limited English proficiency enrolled on the first day of the testing window shall be included in calculations of the school and district’s participation rate. A student with limited English proficiency in the first year of enrollment in a United States school shall be included in the school and district’s participation rate based on the student’s participation in the NCLB-required mathematics assessment, if the student is enrolled in a grade where a NCLB-required mathematics assessment is administered. For students with limited English proficiency who are enrolled for the first year in a U.S. school and are not in a grade in which there is a NCLB-required mathematics test, their participation shall be based on taking

an English language proficiency assessment (or the NCLB-required reading assessment if the school or district chooses to administer it).

Students with limited English proficiency in their first year of enrollment in a U.S. school shall not be required to participate in the state-required reading, science, social studies, practical living/vocational studies, arts and humanities, or writing on-demand assessments. For these students, these assessments shall be optional at the discretion of the school and district.

For the purposes of calculating a school's academic indices in the state dimension and for determining adequate yearly progress, each school shall be held accountable based on an aggregated average of the academic performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades; and each district shall be held accountable based on an aggregated average of the academic performance of the elementary, middle, or high school students who have been enrolled in the district for a full academic year in the accountability grades. These accountability requirements shall also apply to limited English proficient subpopulations of sufficient size, except for students with limited English proficiency who are in their first year of enrollment in a U.S. school.

For students with limited English proficiency who are in their first year of enrollment in a U.S. school and have been enrolled for a full academic year as defined in 703 KAR 5:001, a school and district may choose to include results from the NCLB-required mathematics assessment (and, if given, the state-required reading, science, social studies, arts and humanities, practical living/vocational studies, and writing on demand assessments) in accountability calculations for both the school's academic indices in the state dimension and for determining adequate yearly progress. If this option is exercised, the decision shall be consistent across all content areas for the student.

For students who have been identified with limited English proficiency, it may be necessary to permit instructionally consistent accommodations or modifications, or both for the assessment administration. Any accommodations or modifications or both shall be based on an assessment of English language proficiency, consistent with the normal on-going delivery of instructional services, and stated in the student's Program Services Plan.

If a student with limited English proficiency who is not in the first year of enrollment in a U.S. school has been in an English language instructional environment for at least two (2) full school years prior to the year of the writing assessment in question, the student shall be required to submit a writing portfolio and shall be included in writing portfolio accountability calculations consistent with state law. For instructional purposes a school may allow a student with limited English proficiency, who has not been in an English language instructional environment for at least two (2) full school years prior to the year of the writing assessment in question, to develop a writing portfolio; however, the portfolio shall not be included in writing portfolio accountability calculations.

Part Two: State-Required English Language Proficiency Assessment

A. Assessment of English Language Proficiency, Determining Participation in the State-Required Assessment and Accountability Programs and Determining if Accommodations or Modifications or Both are Needed

A local school district shall administer a home language survey to students enrolled in the district as the first screening process to identify students with limited English proficiency. The home language survey shall be based at a minimum on four questions.

- What is the language most frequently spoken at home?
- Which language did your child learn when he/she first began to talk?
- What language does your child most frequently speak at home?
- What language do you most frequently speak to your child?

If the answer to any of these questions is a language other than English, the local school district shall consider that the student may have limited English proficiency and the student shall be administered an annual assessment of English proficiency (measuring students' oral language in listening and speaking, reading, and writing skills in English). Schools shall use an English language proficiency assessment that is approved by the Department of Education. The performance of students on this approved assessment shall be monitored by the district and reported to the Department of Education. A student's score on the English language proficiency assessment in conjunction with professional judgment shall formally determine whether or not the student is identified as a student with limited English proficiency. In the event professional judgment differs from the results of the English language proficiency assessment, a parent or guardian of the student shall approve with signature the student's classification as a student with limited English proficiency.

For all students with limited English proficiency, school personnel shall determine on an individual basis whether these students will participate with or without accommodations or modifications or both in the state-required Assessment and Accountability Programs. A student with limited English proficiency may use accommodations or modifications or both in the state-required assessments if the student meets all of the following criteria:

1. has been assessed with an English language proficiency assessment and meets the criteria as a student with limited English proficiency;
2. has evaluation data that demonstrates a need for accommodations, modifications, or both;
3. has a current Program Services Plan developed by school personnel that includes accommodations or modifications or both as part of the student's ongoing delivery of instruction; and
4. is participating in instructional programs and services to meet the language and academic content needs of the student.

These accommodations or modifications or both shall be related to the individual student's needs and the impact of the student's English language proficiency on demonstrating what the student knows on a test written in English and the ability to access the curriculum. These decisions shall be made in the best interest of the student (e.g.,

scribing for a student throughout the school year just so that a scribe can be provided for assessment is not in the student's best interest).

B. Documentation Needed to Implement Accommodations or Modifications or Both

If accommodations or modifications or both are needed, documentation shall include:

- the name of the assessment administered to determine a student's English language proficiency and the appropriate accommodations or modifications or both that are needed;
- a Program Services Plan that includes the specific accommodations or modifications or both to be implemented in instruction;
- a list of the names of persons who reviewed the documentation and made the decisions. The list of staff shall be placed within the student's cumulative records; and
- the signature of the principal of the appropriate school as an indication of approval for the described accommodations or modifications or both.

Performance on the English language proficiency assessment in conjunction with professional judgment shall also determine when accommodations or modifications or both are no longer required. Implementation of any accommodations or modifications or both shall not inappropriately impact the content being measured.

C. Implementation of Accommodations or Modifications or Both

Accommodations or modifications or both, when consistent with the normal on-going delivery of instructional services, may include:

1. Administration Strategies:

- reading text to student in English;
- paraphrasing directions for tasks in English or in the student's primary language;
- oral translation of text to the student's primary language;
- administering assessments to small groups of students whose primary language is not English to enable paraphrasing in accordance with paraphrasing guidelines in Section 6 of this regulation and/or translations to student's primary language; and
- administering a single form of the test to a small group of Limited English Proficient students receiving the accommodation of primary language interpretation because a limited number of staff with skills in the student's native language are available.

Every effort should be made to distribute test forms to all students in a random order. Under the condition that a school can demonstrate no feasible way to provide a multiple number of interpreters for students who are limited in English proficiency, school staff may allow students to use the same form of the test so that one interpreter per foreign language may be employed to provide this accommodation. To meet the need for interpreter services, students who have limited English proficiency may use a different test administration schedule than the regular student population, as long as the different schedule is within the district-established testing window. A list of students who are administered the same form of

the test for this purpose shall be submitted to the Division of Assessment Implementation along with the assigned lithocode for each student. If a student has a hearing or visual impairment, uses audiotape, or on-line testing, the student shall be provided the specific form as directed in administration materials.

Use of the same form of the test shall not be permitted for students with disabilities who require scribes or readers, since there is such a large number of these students and one form of the test would be overused considerably within a school.

2. Processing and Response Strategies:

- use of foreign language dictionaries and glossaries that provide translations to student's primary language;
- use of word processor or typewriter; and
- use of grammar or spell-check systems.

A student may not write responses to the state-required Assessment in a language other than English and have a teacher translate. However, the student may be allowed accommodations or modifications or both on the assessment, and these may include dictation of responses, which may be transcribed into English by school staff on the answer document. The student's Program Services Plan shall include any accommodations or modifications or both which are part of the on-going instructional process and are based on the needs identified on a language proficiency test. Accommodations or modifications or both shall not be made solely for the state-required Assessment.

D. Submitting a Portfolio in a Language Other than English

A student with limited English proficiency may submit a portfolio in a language other than English if:

- the student's daily instruction and class work are conducted in the student's native language, and
- the local scorer or a scorer hired by the district is both fluent in that language and trained to score the portfolio.

If this portfolio is pulled for audit, the services of appropriate scorers shall be obtained or the portfolio shall be translated to English by a qualified interpreter.

SECTION 4 - INCLUSION OF STUDENTS RECEIVING INSTRUCTION IN HOME/HOSPITAL SETTINGS

A. Determining Participation

For students receiving instruction in home/hospital settings (i.e., homebound instruction, not home schools), school personnel shall determine on an individual basis how each student will participate in the state-required Assessment and Accountability Programs. The decision shall be documented for each student. The options for participation shall include:

1. The student participates fully; or

2. The student is exempted medically.
 - a. If participation in the state required assessment would jeopardize a student's physical, mental or emotional well being, a school or district shall submit a request for medical exemption, which is subject to the approval of the Department of Education and which describes the medical condition that warrants exempting a student from all or portions of the assessments.
 - b. An identified disability or handicapping condition alone shall not be considered sufficient reason for granting a medical exemption to state required assessment and accountability requirements.
 - c. A student with an approved medical exemption shall be excluded from state required assessments and state and federal accountability calculations.

B. Participation of Students with Disabilities in Home/Hospital Settings

If a student with disabilities is receiving instruction temporarily or long-term in a home/hospital setting, the Admissions and Release Committee or 504 Committee shall follow the procedures described in Section 1 of this document and all federal and state requirements related to due process. A student eligible for participation in the Alternate Portfolio Assessment Program who is receiving instruction in home/hospital settings shall participate in the Alternate Portfolio Assessment unless the student has an injury or illness verified by a physician in accordance with the procedures described in Section 4,A.2 and 704 KAR 7:120.

State Agency Children who receive educational services in a classroom setting located in residential facilities shall not be considered as meeting the criteria for being served in a home/hospital program.

SECTION 5 - INCLUSION OF STUDENTS WITH TEMPORARY MEDICAL CONDITIONS THAT NECESSITATE ACCOMMODATIONS OR MODIFICATIONS OR BOTH FOR PARTICIPATION

Students who become injured (e.g., broken hand) or develop an ailment (e.g., temporary paralysis due to an illness) before or during the testing window may be allowed appropriate accommodations or modifications or both to allow their participation in the state-required Assessment and Accountability Programs. A letter describing the situation and what accommodations or modifications or both are provided shall be sent to the Division of Assessment Implementation and a copy kept on file in the district.

SECTION 6 - CONDITIONS FOR IMPLEMENTING ACCOMMODATIONS OR MODIFICATIONS OR BOTH

A. General Conditions for Using Accommodations

Accommodations or modifications shall meet the following conditions:

- (1) For students with a disability, accommodations or modifications in the instructional process shall be both age-appropriate and related to both the student's verified disability

