

CHAPTER 95**(SB 64)**

AN ACT relating to exceptional children and youth.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 158.150 is amended to read as follows:

- (1) All pupils admitted to the common schools shall comply with the lawful regulations for the government of the schools:
 - (a) Willful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, assault or battery or abuse of other students, the threat of force or violence, the use or possession of alcohol or drugs, stealing or destruction or defacing of school property or personal property of students, the carrying or use of weapons or dangerous instruments, or other incorrigible bad conduct on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school; and
 - (b) Assault or battery or abuse of school personnel; stealing or willfully or wantonly defacing, destroying, or damaging the personal property of school personnel on school property, off school property, or at school-sponsored activities constitutes cause for suspension or expulsion from school.
- (2) Each local board of education shall adopt a policy requiring the expulsion from school for a period of not less than one (1) year for a student who is determined by the board to have brought a weapon to a school under its jurisdiction. The board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have possessed prescription drugs or controlled substances for the purpose of sale or distribution at a school under the board's jurisdiction, or to have physically assaulted or battered or abused educational personnel or other students at a school or school function under the board's jurisdiction. The board may modify the expulsion requirement for students on a case-by-case basis. A board that has expelled a student from the student's regular school setting shall provide or assure that educational services are provided to the student in an appropriate alternative program or setting, unless the board has made a determination, on the record, supported by clear and convincing evidence, that the expelled student poses a threat to the safety of other students or school staff and cannot be placed into a state-funded agency program. Other intervention services as indicated for each student may be provided by the board or by agreement with the appropriate state or community agency. A state agency that provides the service shall be responsible for the cost. In determining whether a student has brought a weapon to school, a local board of education shall use the definition of "unlawful possession of a weapon on school property" stated in KRS 527.070.
- (3) School administrators, teachers, or other school personnel may immediately remove or cause to be removed threatening or violent students from a classroom setting or from the district transportation system pending any further disciplinary action that may occur. Each board of education shall adopt a policy to assure the implementation of this section and to assure the safety of the students and staff.
- (4) A pupil shall not be suspended from the common schools until after at least the following due process procedures have been provided:

- (a) The pupil has been given oral or written notice of the charge or charges against him which constitute cause for suspension;
- (b) The pupil has been given an explanation of the evidence of the charge or charges if the pupil denies them; and
- (c) The pupil has been given an opportunity to present his own version of the facts relating to the charge or charges.

These due process procedures shall precede any suspension from the common schools unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, the due process procedures outlined above shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

- (5) The superintendent, principal, assistant principal, or head teacher of any school may suspend a pupil but shall report the action in writing immediately to the superintendent and to the parent, guardian, or other person having legal custody or control of the pupil. The board of education of any school district may expel any pupil for misconduct as defined in subsection (1) of this section, but the action shall not be taken until the parent, guardian, or other person having legal custody or control of the pupil has had an opportunity to have a hearing before the board. The decision of the board shall be final.
- (6) (a) Suspension of exceptional children, as defined in KRS 157.200, ***shall be considered a change of educational placement if:***
 - 1. ***The child is removed*** for more than ~~a total of~~ ten (10) ***consecutive*** days during a school year; ***or***
 - 2. ***The child is subjected to a series of removals that constitute a pattern because the removals accumulate to more than ten (10) school days during a school year and because of other factors, such as the length of each removal, the total amount of time the child is removed, and the proximity of removals to one another*** ~~shall constitute a change of educational placement~~.
- (b) The admissions and release committee shall meet to review the placement and make a recommendation for continued placement or a change in placement and determine whether regular suspension or expulsion procedures apply. Additional evaluations shall be completed, if necessary.
- ~~(c)~~ ~~(b)~~ If the admissions and release committee determines that an exceptional child's behavior is related to his disability, the child shall not be suspended any further or expelled unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be terminated during a period of expulsion ***and during a suspension after a student is suspended for more than a total of ten (10) days during a school year.*** A district may seek temporary injunctive relief through the courts if the parent and the other members of the

admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.

- (7) Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.

Section 2. KRS 157.200 is amended to read as follows:

- (1) "Exceptional children and youth" means persons under twenty-one (21) years of age who differ in one (1) or more respects from *same-age peers*~~{average or normal children}~~ in physical, mental, learning, emotional, or social characteristics and abilities to such a degree that they need special educational programs or services for them to benefit from the regular or usual facilities or educational programs of the public schools in the districts in which they reside. The Department of Education, through administrative regulations promulgated by the Kentucky Board of Education, shall interpret the statutory definitions of exceptionality. An exceptionality is any trait so defined in this section *or* by administrative regulations *promulgated by*~~{of}~~ the Kentucky Board of Education. Requirements of average daily attendance for exceptional classes shall be regulated by statute, or in the absence of direction by administrative regulations promulgated by the Kentucky Board of Education. Categories of exceptionalities included within, but not limited by, this definition are as follows:
- (a) "*Orthopedic impairment*~~{Physically disabled or orthopedically impaired}~~" means a severe *physical*~~{orthopedic}~~ impairment *of bone or muscle* which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes.
- (b) "Other health impaired" means limited strength, vitality, or alertness, *including a heightened alertness to environmental stimuli*, due to a chronic or acute health problem which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. Chronic health problems may include, but are not be limited to, a heart condition, tuberculosis, sickle cell anemia, hemophilia, epilepsy, rheumatic fever, nephritis, asthma, lead poisoning, leukemia, diabetes, attention deficit disorder, attention deficit hyperactive disorder, or acquired immune deficiency syndrome.
- (c) "~~{Communication disorder or }~~Speech or language *impairment*~~{impaired}~~" means a *communication* disorder *such as stuttering*~~{in language}~~, *impaired* articulation, *impaired language, impaired voice, delayed acquisition of language, or absence of language that*~~{voice, or fluency, which}~~ adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education.
- (d) "Hearing impairment" means a physiological hearing loss:
1. Ranging from mild to profound, which is either permanent or fluctuating, and of such a degree that the pupil is impaired in the processing of linguistic information via the auditory channel either with or without amplification; or
 2. That adversely affects educational performance so that specially designed instruction is required for the child or youth to benefit from education.

The term shall include both deaf and hard of hearing children.

- (e) "Mental disability" means a deficit or delay in intellectual and adaptive behavior functioning, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education, and which is typically manifested during the developmental period.
- (f) "Specific learning disability" means a disorder in one (1) or more of the psychological processes primarily involved in understanding or using spoken or written language which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical abilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. The term does not include a learning problem which is the direct result of:
 - 1. A hearing impairment;
 - 2. Visual, physical, mental, or emotional-behavioral disabilities; or
 - 3. Environmental, cultural, or economic differences.
- (g) "Emotional-behavioral disability" means a condition characterized by behavioral excess or deficit which significantly interferes with a pupil's interpersonal relationships or learning process to the extent that it adversely affects educational performance so that specially designed instruction is required in order for the pupil to benefit from education.
- (h) "Multiple disability" means a combination of two (2) or more disabilities resulting in significant learning, developmental, or behavioral and emotional problems, which adversely affects educational performance and, therefore, requires specially designed instruction in order for the pupil to benefit from education. A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition.
- (i) "Deaf-blind" means auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that the pupil cannot be appropriately educated in special education programs designed solely for pupils with hearing impairments, visual impairments, or severe disabilities, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.
- (j) "Visually disabled" means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils.
- (k) "Developmental delay" means a significant discrepancy between a child's current level of performance in basic skills such as cognition, language or communication, self-help, social-emotional, or fine or gross motor, and the expected level of performance for that age. The term shall be used only with children ages three (3) through eight (8).
- (l) "Traumatic brain injury" means an acquired impairment to the neurological system resulting from an insult to the brain which adversely affects educational performance and causes temporary or permanent and partial or complete loss of:

1. Cognitive functioning;
2. Physical ability; or
3. Communication or social-behavioral interaction.

The term does not include a brain injury that is congenital or degenerative, or a brain injury induced by birth trauma.

- (m) "Autism" means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance. Characteristics of autism include:

1. ~~Irregularity and impairment in communication;~~
2. Engagement in repetitive activity and stereotyped movement;
2. ~~3.~~ Resistance to environmental change or change in daily routine; and
3. ~~4.~~ Unusual responses to sensory experience.

The term does not include children with characteristics of an emotional-behavioral disability.

- (n) "Gifted and talented student" means a pupil identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial or leadership skills, or in the visual or performing arts.
- (2) "Special education" means specially designed instruction to meet the unique needs of an exceptional child or youth.
- (3) "Special educational facilities" means physical facilities designed or adapted to meet the needs of exceptional children and youth, and approved according to regulations promulgated by the Kentucky Board of Education.
- (4) "Related services" means **transportation and the** ~~such~~ developmental, corrective, and other supportive services ~~as are~~ required to assist an exceptional child or youth to benefit from special education, and may include, but are not limited to, **speech-language pathology and audiology services**; psychological services; ~~;~~ physical and occupational therapy; **recreation, including therapeutic recreation**; **early** ~~;~~ identification and assessment of disabilities; ~~;~~ counseling services, **including rehabilitation counseling**; **orientation and mobility services**; ~~and~~ medical services for diagnostic or evaluation purposes; **school health services**; **social work services in schools**; and **parent counseling and training**.
- (5) "Transition services" means a coordinated set of activities for a pupil designed within an outcome-oriented process, that promotes movement from school to post-school activities. The term includes:
- (a) Postsecondary education;
 - (b) Vocational training; and
 - (c) Integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests, and shall include instruction, community

experience, the development of employment, and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

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