

CHAPTER 124**(SB 115)**

AN ACT relating to civil actions under the federal Individuals with Disabilities Education Act.

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

Section 1. KRS 157.224 is amended to read as follows:

- (1) The Commonwealth of Kentucky is committed to providing a comprehensive educational program for its exceptional children and youth. The Department of Education coordinates, directs, and monitors that program. State direction and implementation of a statewide special education program is manifested in the biennial appropriation of funds to assure a quality educational opportunity for exceptional children and youth in existing, locally operated, classrooms.
- (2) All county and independent boards of education shall operate special education programs pursuant to an annual application which has been approved by the Kentucky Department of Education pursuant to standards set out in administrative regulations promulgated by the Kentucky Board of Education. If any county or independent board of education fails to operate and implement special education programs in accordance with the standards, the application of the county or independent board of education for funding pursuant to KRS 157.360 may be considered insufficient and the add-on funds generated under that statute may be withheld by the Kentucky Board of Education until the program is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended. The add-on funds shall not be withheld until the district has had the benefit of intense assistance from the Department of Education, a Kentucky Special Education Mentor under the provisions of KRS 157.197 or other assistance approved by the department for at least two (2) years. The superintendent of each local school district shall certify its enrollment of exceptional children and youth to the Department of Education. The department shall audit student enrollment and monitor local district compliance in accordance with Kentucky Board of Education administrative regulations.
- (3) The Kentucky Board of Education administrative regulations shall set forth the data local school districts shall submit in their annual applications and reports. The data shall be reported in the same format as data submitted to the Department of Education for all other students and shall include, but not be limited to:
 - (a) The number of students who are suspended, expelled, and quit school annually;
 - (b) The success of students placed in various classroom settings including, but not limited to, regular classrooms, resource rooms, self-contained classrooms, and vocational programs as measured by the state assessment program; and
 - (c) Information about students' successful transition to adult life.
- (4) Local school districts and schools found to be noncompliant with state board administrative regulations shall develop an improvement plan that shall be submitted to the Department of Education for approval. Local school districts shall use specialized resources in the development of the plan which may include universities, regional resource centers, professional organizations, and constituent advocacy groups.

- (5) There is hereby created a special education trust fund to receive the funds withheld under subsection (2) of this section and interest accrued from the funds invested. The funds and interest shall not lapse, but shall be returned to the district when it is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended.
- (6) All administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. The provisions of KRS Chapter 13B notwithstanding, the decision of the hearing officer in hearings under this section shall be the final order and shall be rendered *pursuant to 34 C.F.R. 300.511. A parent, public agency, or eligible student may only request the administrative hearing within three (3) years of the date the parent, public agency, or eligible student knew about the alleged action that forms the basis for the complaint, unless a longer period is reasonable because the violation is continuing. This three (3) year limit shall not limit the introduction of evidence older than three (3) years if the evidence is relevant to the complaint and shall not apply to the parent or the eligible student if the parent or eligible student was prevented from requesting the hearing due to:*
- (a) *Failure of the local educational agency to provide prior written or procedural safeguards notices;*
 - (b) *False representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or*
 - (c) *The local educational agency's withholding of information relevant to the hearing issues from the parent*~~[within the time limit specified in 34 C.F.R. 300.512(a)].~~

Approved April 9, 2004