

**CHAPTER 84****(SB 172)**

AN ACT relating to health and nutrition in schools.

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

Section 1. KRS 156.160 is amended to read as follows:

- (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; and
    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;
  - (b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;
  - (c) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. Student scores from any assessment administered under KRS 158.6453 that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;
  - (d) 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;
  - (e) 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;
  - (f) 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 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;

- (g) 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;
  - (h) The transportation of children to and from school;
  - (i) 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;
  - (j) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;
  - (k) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and
  - (l) The disposal of real and personal property owned by local boards of education.
- (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, 158.685, 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 Section 4 of this Act 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.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

*Beginning with the 2006-2007 school year, each school shall limit access to no more than one (1) day each week to retail fast foods in the cafeteria, whether sold by contract, commercial vendor, or otherwise.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *Each district shall appoint a food service director who is responsible for the management and oversight of the food service program in the district, except two (2) or more contiguous districts may form one (1) "school food service area" and a school food service director shall be jointly selected by the participating school superintendents to oversee the school food service area.*
- (2) (a) *Any person serving as a school food service director or person otherwise responsible for menu planning in each school district on the effective date of this Act shall be credentialed as a "school food service and nutrition specialist" or certified by a Level 2 certificate issued by the American School Food Service Association within three (3) years after the effective date of this Act. No school district shall be required to have more than one (1) person with a credential or certificate under this section.*
- (b) *After the effective date of this Act, a person appointed to serve as school food service director or the person designated for menu planning who does not hold the "school*

*food service and nutrition specialist" credential or the Level 2 certificate issued by the American School Food Service Association shall obtain the appropriate credential within three (3) years of his or her appointment or designation. No school district shall be required to have more than one (1) person with a credential or certificate under this section.*

- (c) Eight (8) clock hours of the required continuing education for maintaining the appropriate credential or certificate under this subsection shall be directly related to applied nutrition and healthy meal planning and preparation.*
- (3) School cafeteria managers shall annually receive at least two (2) hours of continuing education in applied nutrition and healthy meal planning and preparation.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) The Kentucky Board of Education shall promulgate an administrative regulation in accordance with KRS Chapter 13A to specify the minimum nutritional standards for all foods and beverages that are sold outside the National School Breakfast and National School Lunch programs, whether in vending machines, school stores, canteens, or a la carte cafeteria sales. Minimum nutritional standards shall be based on the most recent edition of the United States Department of Agriculture's Dietary Guidelines for Americans. The administrative regulation shall address serving size, sugar, and fat content of the foods and beverages. School districts may impose more stringent standards than the standards implemented under the administrative regulation. A school shall follow the minimum standards specified in the administrative regulation unless a waiver has been requested by the school district for the school from the Kentucky Board of Education. Any waiver approved by the Board of Education shall be reviewed on an annual basis.*
- (2) As used in this section:*
  - (a) "Competitive food" means any food or beverage item sold in competition with the National School Breakfast and National School Lunch programs. The term does not include any food or beverage sold a la carte in the cafeteria;*
  - (b) "School day" means the period of time between the arrival of the first student at the school building and the end of the last instructional period; and*
  - (c) "School-day-approved beverage" means water, one hundred percent (100%) fruit juice, lowfat milk, and any beverage that contains no more than ten (10) grams of sugar per serving.*
- (3) No school may sell competitive foods or beverages from the time of the arrival of the first student at the school building until thirty (30) minutes after the last lunch period.*
- (4) Only school-day-approved beverages shall be sold in elementary schools during the school day in vending machines, school stores, canteens, or fundraisers that sell beverages by students, teachers, or groups.*
- (5) Nothing in this section or Section 2 of this Act shall be construed to limit the sale of any foods or beverages by fundraisers off school property.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) Each school food service director shall annually assess school nutrition in the district and issue a written report to parents, the local school board, and school-based decision making councils. The report shall include:**
  - (a) An evaluation of compliance with the National School Breakfast and National School Lunch programs;**
  - (b) An evaluation of the availability of contracted fast foods or foods sold through commercial vendors;**
  - (c) A review of access to foods and beverages sold outside the National School Breakfast and National School Lunch programs, including vending machines, school stores, canteens, and a la carte cafeteria sales;**
  - (d) A list of foods and beverages that are available to students, including the nutritional value of those foods and beverages; and**
  - (e) Recommendations for improving the school nutrition environment.**
- (2) The Kentucky Board of Education shall develop an assessment tool that each school district may use to evaluate its physical activity environment.**
- (3) The evaluation shall be completed annually and released to the public at the time of the release of the nutrition report under subsection (1) of this section.**
- (4) Each school board shall discuss the findings of the nutrition report and physical activity report and seek public comments during a publicly advertised special board meeting or at the next regularly scheduled board meeting following the release of the nutrition and physical activity reports.**
- (5) By January 31 of each year, the local board of education shall hold an advertised public forum to present a plan to improve school nutrition and physical activities in the school district.**
- (6) Each school district shall compile a summary of findings and recommendations and submit the summary to the Kentucky Board of Education.**

Section 6. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:**
  - (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school;**
  - (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:**
    - 1. Exclusively vocational-technical, special education, or preschool programs;**
    - 2. Instructional programs operated in institutions or schools outside of the district;**  
or
    - 3. Alternative schools designed to provide services to at-risk populations with unique needs;**

- (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers; and
  - (d) "Parent" means:
    - 1. A parent, stepparent, or foster parent of a student; or
    - 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.
- (2) Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:
- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative shall not be a local board member or a board member's spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees;
  - (b)
    - 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal or head teacher shall be the chair of the school council.
    - 2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
      - a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and

- b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty;
- (c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
- 2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection;
- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy;
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply;
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals;
- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment;
- (h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2)(i)10. of this section. The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. When

a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020. The superintendent shall provide additional applicants upon request when qualified applicants are available;

- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
  - 1. Determination of curriculum, including needs assessment and curriculum development;
  - 2. Assignment of all instructional and noninstructional staff time;
  - 3. Assignment of students to classes and programs within the school;
  - 4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
  - 5. Determination of use of school space during the school day;
  - 6. Planning and resolution of issues regarding instructional practices;
  - 7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
  - 8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;
  - 9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and
  - 10. Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation; and
- (j) Each school council shall annually review data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include but not be limited to information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council, with the involvement of parents, faculty, and staff, shall develop and adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b) by April of each year and submit the plan to the superintendent and local board of education for review as described in KRS 160.340. The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no



later than November 1 of each year. If a school does not have a council, the review shall be completed by the principal with the involvement of parents, faculty, and staff.

- (3) The policy adopted by the local board to implement school-based decision making shall also address the following:
  - (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
  - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
  - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;
  - (d) Professional development plans developed pursuant to KRS 156.095;
  - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
  - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
  - (g) Requirements for waiver of district policies;
  - (h) Requirements for record keeping by the school council; and
  - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school meeting its goal as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.
- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, no later than thirty (30) days after the beginning of the

service year for which they are elected to serve. School council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve. Experienced members may participate in the training for new members to fulfill their training requirement. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education. By November 1 of each year, the principal through the local superintendent shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making, including but not limited to a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the commissioner of education and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development in compliance with requirements specified in KRS 156.095, except as provided in KRS 158.649. School councils of small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9)
  - (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
  - (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
  - (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
  - (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a

superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

- (10) Notwithstanding subsections (1) to (9) of this section, a school's right to establish or maintain a school-based decision making council and the powers, duties, and authority granted to a school council may be rescinded or the school council's role may be advisory if the commissioner of education or the Kentucky Board of Education takes action under KRS 160.346.
- (11) *Each school council of a school containing grades K-5 or any combination thereof, or if there is no school council, the principal, shall develop and implement a wellness policy that includes moderate to vigorous physical activity each day and encourages healthy choices among students. The policy may permit physical activity to be considered part of the instructional day, not to exceed thirty (30) minutes per day, or one hundred and fifty (150) minutes per week. Each school council, or if there is no school council, the principal, shall adopt an assessment tool to determine each child's level of physical activity on an annual basis. The council or principal may utilize an existing assessment program. The Kentucky Department of Education shall make available a list of available resources to carry out the provisions of this subsection. The department shall report to the Legislative Research Commission no later than November 1 of each year on how the schools are providing physical activity under this subsection and on the types of physical activity being provided. The policy developed by the school council or principal shall comply with provisions required by federal law, state law, or local board policy.*

Approved March 16, 2005.