

## CHAPTER 45

## ( HB 69 )

AN ACT relating to early education assessment and intervention.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Aphasia" means a condition characterized by either partial or total loss of the ability to communicate verbally or through written words. A person with aphasia may have difficulty speaking, reading, writing, recognizing the names of objects, or understanding what other people have said. The condition may be temporary or permanent and does not include speech problems caused by loss of muscle control;*
- (b) *"Dyscalculia" means the inability to understand the meaning of numbers, the basic operations of addition and subtraction, the complex operations of multiplication and division, or to apply math principles to solve practical or abstract problems;*
- (c) *"Dysgraphia" means difficulty in automatically remembering and mastering the sequence of muscle motor movements needed to accurately write letters or numbers;*
- (d) *"Dyslexia" means a language processing disorder that is neurological in origin, impedes a person's ability to read, write, and spell, and is characterized by difficulties with accuracy or fluency in word recognition and by poor spelling and decoding abilities;*
- (e) *"Phonemic awareness" means the ability to recognize that a spoken word consists of a sequence of individual sounds and the ability to manipulate individual sounds in speaking; and*
- (f) *"Scientifically based research" has the same meaning as in 20 U.S.C. sec. 7801(37).*

(2) *Notwithstanding any other statute or administrative regulation to the contrary, the Kentucky Board of Education shall promulgate administrative regulations for district-wide use of a response-to-intervention system for students in kindergarten through grade three (3), that includes a tiered continuum of interventions with varying levels of intensity and duration and which connects general, compensatory, and special education programs to provide interventions implemented with fidelity to scientifically based research and matched to individual student strengths and needs. At a minimum, evidence of implementation shall be submitted by the district to the department for:*

- (a) *Reading and writing by August 1, 2013;*
- (b) *Mathematics by August 1, 2014; and*
- (c) *Behavior by August 1, 2015.*

(3) *The Department of Education shall make available technical assistance and training to assist all local school districts in the implementation of the district-wide, response-to-intervention system as a means to identify and assist any student experiencing difficulty in reading, writing, mathematics, or behavior.*

(4) *The technical assistance and training shall be designed to improve:*

- (a) *The use of specific screening processes and programs to identify student strengths and needs;*
- (b) *The use of screening data for designing instructional interventions;*
- (c) *The use of multisensory instructional strategies and other interventions validated for effectiveness by scientifically based research;*
- (d) *Progress monitoring of student performance; and*
- (e) *Accelerated, intensive, direct instruction that addresses students' individual differences and enables them to catch up with typically performing peers.*

(5) *The department shall develop and maintain a Web-based resource providing teachers access to:*

- (a) *Information on the use of specific screening processes and programs to identify student strengths and needs; and*
- (b) *Current, scientifically based research and age-appropriate instructional tools that may be used for substantial, steady improvement in:*
  - 1. *Reading when a student is experiencing difficulty with phonemic awareness, phonics, vocabulary, fluency, general reading comprehension, or reading in specific content areas, or is exhibiting characteristics of dyslexia, aphasia, or other reading difficulties;*
  - 2. *Writing when a student is experiencing difficulty with consistently producing letters or numbers with accuracy or is exhibiting characteristics of dysgraphia;*
  - 3. *Mathematics when a student is experiencing difficulty with basic math facts, calculations, or application through problem solving, or is exhibiting characteristics of dyscalculia or other mathematical difficulties; or*
  - 4. *Behavior when a student is exhibiting behaviors that interfere with his or her learning or the learning of other students.*
- (6) *The department shall encourage districts to utilize both state and federal funds as appropriate to implement a district-wide system of interventions.*
- (7) *The department is encouraged to coordinate technical assistance and training on current best practice interventions with state postsecondary education institutions.*
- (8) *The department shall collaborate with the Kentucky Collaborative Center for Literacy Development, the Kentucky Center for Mathematics, the Kentucky Center for Instructional Discipline, the Education Professional Standards Board, the Council on Postsecondary Education, postsecondary teacher education programs, and other agencies and organizations as deemed appropriate to ensure that teachers are prepared to utilize scientifically based interventions in reading, writing, mathematics, and behavior.*
- (9) *In compliance with 20 U.S.C. sec. 1414(a)(1)(E), screening of a student to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services and nothing in this section shall limit a school district from completing an initial evaluation of a student suspected of having a disability.*
- (10) *By November 30, 2013, and annually thereafter, the department shall provide a report to the Interim Joint Committee on Education that includes:*
  - (a) *Data on the number of school districts implementing response-to-intervention systems and scientifically based research practices in reading, writing, mathematics, and behavior;*
  - (b) *Information on the types of scientifically based research interventions implemented; and*
  - (c) *Data on the effectiveness of interventions in improving student performance in Kentucky schools.*

➔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 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 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" means a severe physical 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) "Speech or language impairment" means a communication disorder such as stuttering, impaired articulation, impaired language, impaired voice, delayed acquisition of language, or absence of language that 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. ***"Specific learning disability" may include conditions such as dyslexia, dyscalculia, dysgraphia, developmental aphasia, or perceptual motor disabilities.*** 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. ***Determination of the existence of a specific learning disability shall include documentation that a child does not make sufficient progress in meeting age or grade-level content standards when provided with appropriate instruction and learning experiences delivered by qualified personnel, including the child's response to scientific, research-based interventions and additional information derived from an individual evaluation.*** The term does not include a learning problem which is ***primarily*** the ~~direct~~ result of:
  1. A hearing impairment;
  2. Visual, physical, mental, or emotional-behavioral disabilities;~~{or}~~
  3. Environmental, cultural, or economic differences; ***or***
  4. ***Limited English proficiency;***
- (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 nonverbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance. Characteristics of autism include:
  1. Engagement in repetitive activity and stereotyped movement;
  2. Resistance to environmental change or change in daily routine; and
  3. Unusual responses to sensory experience.

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

- (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 developmental, corrective, and other supportive services 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; 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 postschool 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 postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

**Signed by Governor April 11, 2012.**

