

**CHAPTER 61****( HB 168 )**

AN ACT relating to school district superintendents.

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

➔Section 1. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
  - (a) *"Alternative education program" means a program that exists to meet the needs of students that cannot be addressed in a traditional classroom setting but through the assignment of students to alternative classrooms, centers, or campuses that are designed to remediate academic performance, improve behavior, or provide an enhanced learning experience. Alternative education programs do not include career or technical centers or departments.*
  - (b) "Contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor;
  - (c)~~(b)~~ "Relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law; and
  - (d)~~(e)~~ "Vacancy" means any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.
- (2) Except as provided in KRS 160.346:
  - (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself or herself to another position within the school district;
  - (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing;
  - (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days;
  - (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district;
  - (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office, or prior to marrying a relative of the superintendent, and who is qualified for the position the employee holds. A superintendent's spouse who has at least twenty (20) years of service in school systems may be an employee of the school

district. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection;

- (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection; and
- (g)
  1. No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year.
  2. No spouse of a principal shall be employed in the principal's school, except:
    - a. A principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district; or
    - b. A principal's spouse who was employed in the 1989-90 school year and is in a school district containing no more than one (1) elementary school, one (1) middle school, and one (1) high school.
  3. A principal's spouse who is employed in the principal's school shall be evaluated by a school administrator other than the principal.
  4. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) ***No superintendent shall assign a certified or classified staff person to an alternative education program as part of any disciplinary action taken pursuant to KRS 161.790 or KRS 161.011 or as part of a corrective action plan established pursuant to the local district evaluation plan.***
- (4) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.
- ~~(5)~~(4) (a) A superintendent shall require a national and state criminal background check on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.
- (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation.
- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Department of Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.
- ~~(6)~~(5) A superintendent shall require a state criminal background check on all classified initial hires.
  - (a) The superintendent shall require that each classified initial hire submit to a state criminal history background check by the Department of Kentucky State Police. If an applicant has been a resident of

Kentucky twelve (12) months or less, the superintendent may require a national criminal history background check as a condition of employment.

- (b) Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested under the provisions of paragraph (a) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- ~~(7)(6)~~ The superintendent may require a contractor, volunteer, or visitor to submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation. Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- ~~(8)(7)~~ (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
- (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
  - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
  - (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.
- ~~(9)(8)~~ (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF EMPLOYMENT."
- (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
  - (c) Each application form for a district position shall require the applicant to:
    1. Identify the states in which he or she has maintained residency, including the dates of residency; and
    2. Provide picture identification.
- ~~(10)(9)~~ The provisions of subsections ~~(4)~~ (5), (6), (7), ~~and~~ (8) **and** (9) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- ~~(11)(10)~~ A school-based decision-making council parent member, as defined under KRS 160.345, shall submit to a state and national fingerprint-supported criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation. The results of the state criminal history background check and the results of the national criminal history background check, if requested, shall be sent to the district superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search. A parent member may

serve prior to the receipt of the criminal history background check report but shall be removed from the council on receipt by the school district of a report documenting a record of a sex crime or criminal offense against a victim who is a minor as defined in KRS 17.500 or as a violent offender as defined in KRS 17.165, and no further procedures shall be required.

~~(12)(11)~~ Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.

➔Section 2. KRS 160.346 is amended to read as follows:

(1) For purposes of this section:

(a) "Persistently low-achieving school" means:

1. For school years 2009-2010 and 2010-2011, based on averaging the percentage of proficient or higher in reading and mathematics on the state assessments under KRS 158.6455:
  - a. A Title I school in the group of Title I schools that contains a minimum of the lowest five (5) or the lowest five percent (5%), whichever is greater, of the Title I schools identified collectively in any school improvement category under the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, that have failed to make adequate yearly progress for three (3) consecutive years; or
  - b. A non-Title I school in the group of non-Title I schools that contains a minimum of the lowest five (5) or the lowest five percent (5%), whichever is greater, of the non-Title I schools that contain grades seven (7) through twelve (12), or any combination thereof, and has at least thirty-five percent (35%) or greater poverty as identified in the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, that have failed to make adequately yearly progress for three (3) consecutive years;
2. A high school whose graduation rate, based on the state's approved graduation rate calculation, has been sixty percent (60%) for three (3) or more consecutive years; or
3. Beginning with the state assessment results for the school year 2011-2012, a school that is in the lowest five percent (5%) of all schools that fail to meet the achievement targets of the state accountability system under KRS 158.6455 for at least three (3) or more consecutive years. For school years 2011-2012 and 2012-2013, the three (3) consecutive years shall be evaluated based on the status of the school under this subparagraph and subparagraph 1. of this paragraph; and

(b) "School intervention" means a process to turn around a persistently low-achieving school that is chosen by a school council, a superintendent and a local board of education, or the commissioner of education, or the commissioner's designee with approval of the Kentucky Board of Education.

(2) (a) A school with a school council identified as needing improvement under KRS 158.6455 shall include in its school improvement plan actions to strengthen the school council and the school-based decision-making process at the school.

(b) The local school district shall include in its assistance plan for a school identified in paragraph (a) of this subsection actions to strengthen the functioning of the school council and the school-based decision-making process at the school.

(3) (a) An audit team established under KRS 158.6455(4) and (5), auditing a persistently low-achieving school, shall include in the review and report:

1. The functioning of the school and the school council;
2. A determination of the school council and principal's ability to lead the intervention in the persistently low-achieving school;

3. The interaction and relationship between the superintendent, central office personnel, and the council; and
  4. A recommendation to the commissioner of education concerning whether the school council should retain the authority granted to it under KRS 160.345, whether the council should be replaced, and whether the current principal should remain as principal in the school. If the recommendation is to transfer the authority of the school council, the team shall also recommend whether:
    - a. The authority should be transferred to the superintendent or to the commissioner of education, who shall designate staff to manage the school;
    - b. The school council should continue to act in an advisory capacity until all authority has been restored under subsection (8) of this section; and
    - c. The members of the school council shall be replaced by the commissioner of education.
- (b) An audit team established under KRS 158.6455(4) and (5), auditing a district of a school subject to paragraph (a) of this subsection, shall include in its review and report:
1. The overall functioning of the school district;
  2. The interaction and relationship between the superintendent, central office personnel, school board members, and the council; and
  3. A determination of the district's ability to manage the intervention in the persistently low-achieving school.
- (4) Within thirty (30) days of receiving the reports of the school and district audits, the commissioner shall act on the recommendations in the reports and other relevant data that the commissioner considers to have bearing on his or her determination of actions to be taken.
- (5) Within thirty (30) days of the commissioner's action on the audit teams' recommendations, the school council or local board of education may appeal the commissioner's action to the Kentucky Board of Education by submitting a written request, including any supporting information. The Kentucky Board of Education shall consider the audit reports, the commissioner's decision, and the request for consideration with any supporting information, and make a final determination. If the state board is not scheduled to meet within thirty (30) days following the receipt of an appeal of the commissioner's decision, the board chair shall call a special meeting for action upon the appeal.
- (6) If a decision is made to transfer powers, duties, and authority under subsection (4) of this section, the local superintendent, subject to the policies adopted for the district by the local board of education, or the commissioner or the commissioner's designee shall assume all powers, duties, and authority granted to a school council under KRS 160.345 thirty (30) days following the commissioner's action on the audit teams' recommendations if no appeal to the Kentucky Board of Education is submitted or following the final determination of the Kentucky Board of Education on an appeal, whichever is appropriate.
- (7) Within thirty (30) days after assuming the powers, duties, and authority under subsection (6) of this section, the superintendent or the commissioner or the commissioner's designee shall consult with the council, if the council has been given an advisory role under subsection (4) of this section, and with stakeholders at the school, including parents, the principal, certified staff, and classified staff, and prepare a plan for developing capacity for sound school-based decision making at the school. The commissioner of education shall review the proposed plan and approve it or identify specific areas for improvement before giving final approval. The superintendent shall report to the commissioner every six (6) months on the implementation and results of the approved plan.
- (8) The school's right to establish a council or the school's right for the council to assume the full authority granted under KRS 160.345 shall be restored if the school is not classified as persistently low achieving for two (2) consecutive years.
- (9) Each persistently low-achieving school shall engage in one (1) of the following intervention options:
- (a) "External management option" which requires that the day-to-day management of the school is transferred to an education management organization that may be a for-profit or nonprofit organization that has been selected by a local board of education from a list of management organizations. The management organization may be approved by the Kentucky Board of Education after a rigorous

review process, which shall be developed by the state board by the promulgation of administrative regulations. The management organization's authority shall include the right to make personnel decisions that comply with KRS Chapter 161 and any employee-employer bargained contract that is in effect;

- (b) "Restaffing option" which requires the replacement of the principal and the existing school-based decision-making council unless the audit reports under subsection (3) of this section recommended otherwise, screening of existing faculty and staff with the retention of no more than fifty percent (50%) of the faculty and staff at the school, development and implementation of a plan of action that uses research-based school improvement initiatives designed to turn around student performance. Personnel actions shall comply with KRS Chapter 161 and notwithstanding KRS 160.380(1)(d)~~(e)~~ relating to filling vacant positions and KRS 160.345(2)(h)1. relating to transfers;
- (c) "School closure option" which requires the closure of an existing school and the transfer of its students to other schools within the district that are meeting their accountability measures, reassignment of the school's faculty and staff to available positions within the district, and which may result in nonrenewal of contracts, dismissal, demotion, or a combination of these personnel actions which shall comply with KRS Chapter 161 and notwithstanding KRS 160.380(1)(d)~~(e)~~ relating to filling vacant positions and KRS 160.345(2)(h)1. relating to transfers;
- (d) "Transformation option" means a school intervention option that begins with replacing the school principal who led the school prior to commencement of the transformation option and replacing the school council members unless the audit reports under subsection (3) of this section recommended otherwise and instituting an extensive set of specified strategies designed to turn around the identified school which shall comply with KRS Chapter 161 and notwithstanding KRS 160.380(1)(d)~~(e)~~ relating to filling vacant positions and KRS 160.345(2)(h)1. relating to transfers; or
- (e) Any other model recognized by the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor.

The Kentucky Board of Education shall promulgate administrative regulations to establish the process and procedures for implementing the intervention options identified in paragraphs (a) to (e) of this subsection available to local boards of education and the commissioner of education.

- (10) Professionally negotiated contracts by a local board of education shall not take precedence over the requirements of paragraphs (b), (c), and (d) of subsection (9) of this section.
- (11) The Department of Education shall provide services and support to assist the schools identified as persistently low-achieving.
- (12) If, in the course of a school or district audit, the audit team identifies information suggesting that a violation of KRS 160.345(9)(a) may have occurred, the commissioner of education shall forward the evidence to the Office of Education Accountability for investigation.

➔Section 3. KRS 160.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 160.250 shall be fined not more than two hundred dollars (\$200).
- (2) Any person who violates any of the provisions of KRS 160.300 shall be fined not less than ten (\$10) nor more than fifty dollars (\$50).
- (3) Any superintendent who violates any of the provisions of KRS 160.350 to 160.400 shall be fined not less than one hundred (\$100) nor more than one thousand dollars (\$1,000) for each offense, and the violation is grounds for revocation of his certificate.
- (4) Any person who violates any of the provisions of KRS 160.550 shall be fined not less than fifty (\$50) nor more than one hundred dollars (\$100), and shall be subject to removal from office.
- (5) The Kentucky Board of Education may withhold funds allotted under KRS 157.350 from any local district which violates subsection ~~(4)~~~~(3)~~ of KRS 160.380 in the amount of one thousand dollars (\$1,000) per violation.
- (6) In addition to penalties listed in this section, any local district which violates subsection ~~(4)~~~~(3)~~ of KRS 160.380 shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

➔Section 4. KRS 161.044 is amended to read as follows:

- (1) The Kentucky Board of Education shall promulgate administrative regulations governing the qualifications of teachers' aides in the common schools. All teachers' aides working in kindergarten or with entry level students in primary classes and all instructional teachers' aides initially employed after July 1, 1986, except those with current teacher certification, shall have a high school diploma or a general equivalency diploma.
- (2) "Noninstructional teacher's aide" means an adult who works under the direct supervision of the teaching staff in performing noninstructional functions such as clerical duties, lunch room duties, leading pupils in recreational activities, aiding the school librarian, preparing and organizing instructional material and equipment and monitoring children during a noninstructional period. Noninstructional teachers' aides employed on a full-time basis shall possess skills necessary to perform their duties and shall meet the requirements established in KRS 161.011 and 160.380(6)~~(5)~~.
- (3) Within the administrative regulations established by the Kentucky Board of Education, a local district may employ teachers' aides in supplementary instructional and noninstructional activities with pupils. While engaged in an assignment as authorized under the administrative regulations, and as directed by the professional administrative and teaching staff, these personnel shall have the same legal status and protection as a certified teacher in the performance of the same or similar duties.
- (4) Local districts shall give preference to applicants for the position of teacher's aide who have regular or emergency teacher certification.
- (5) Local districts shall provide training of the instructional teacher's aide with the certified employee to whom he is assigned.

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