

CHAPTER 31
(SB 15)

AN ACT relating to school policies.

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) "*Clear CA/N check*" means a letter from the Cabinet for Health and Family Services indicating that there are no substantiated findings of child abuse or neglect relating to a specific individual;~~"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) "Relative" means father, mother, brother, sister, husband, wife, son and daughter; and
 - (d) "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, *the school district personnel actions identified in this section shall be carried out as follows:*
- (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 fifteen (15) 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 fifteen (15) 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; *and*
 - (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.~~{;}~~
- (3) *Restrictions on employment of relatives shall be as follows:*

- (a)~~(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 previously been employed in a school system 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;
- (b)~~(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~~;
- (c)~~(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; and
- (d)~~(h)~~ A relative that is ineligible for employment under paragraph (a), (b), or (c)~~(e), (f), or (g)~~ of this subsection may be employed as a substitute for a certified or classified employee if the relative is not:
1. A regular full-time or part-time employee of the district;
 2. Accruing continuing contract status or any other right to continuous employment;
 3. Receiving fringe benefits other than those provided other substitutes or
 4. Receiving preference in employment or assignment over other substitutes.
- (4)~~(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 161.011 or 161.790 as part of a corrective action plan established pursuant to the local district evaluation plan.
- (5)~~(4)~~ No superintendent shall *initially* 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 or persons with a substantiated finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. The superintendent may employ, at his discretion, except at a Kentucky Educational Collaborative for State Agency Children program, persons convicted of sex crimes classified as a misdemeanor.
- (6)~~(5)~~ *Requirements for background checks shall be as follows:*
- (a) A superintendent shall require *the following individuals to submit to* a national and state criminal background check *by the Department of Kentucky State Police and the Federal Bureau of Investigation* and *have*~~require~~ a clear CA/N check~~letter~~, provided by the individual~~, from the Cabinet for Health and Family Services indicating the individual is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect~~

records maintained by the Cabinet for Health and Family Services on all new certified hires in the school district and student teachers assigned within the district]:

1. *Each new certified or classified hire;*
2. *A nonfaculty coach or nonfaculty assistant as defined under KRS 161.185;*
3. *A student teacher;*
4. *A school-based decision making council parent member; and*
5. *Any adult who is permitted access to school grounds on a regularly scheduled and continuing basis pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity.*

- (b) 1. *The requirements of paragraph (a) of this subsection shall not apply to*~~[Excluded are]~~:
- a. *Classified and certified individuals employed by the school district prior to the effective date of this Act; or*
 - b. 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 and who have a *clear CA/N check*~~[letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services]~~ 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 and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.]~~

~~(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, the Federal Bureau of Investigation, and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.]~~

2.~~[(d)]~~ The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.

~~[(6) (a) A superintendent shall require a national and state criminal background check and require a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on all classified initial hires.]~~

~~(b) The superintendent shall require that each classified initial hire submit to a national and state criminal history background check by the Department of Kentucky State Police and require a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.]~~

~~(c) Any request for any criminal background 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 paragraph (b) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.]~~

- (c)~~{(7)(a)}~~ *A parent member may serve prior to the receipt of the criminal history background check and CA/N letter required by paragraph (a) of this subsection but shall be removed from the council on receipt by the school district of a report documenting a record of abuse or neglect, or 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.*
- (d) A~~{The}~~ superintendent~~{ shall require a contractor who works on school premises during school hours and}~~ may require~~{ a contractor who does not have contact with students,}~~ a volunteer~~{,}~~ or a 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 and have a *clear CA/N check*~~{letter}~~, provided by the individual~~{, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.}~~
- ~~{(b)}~~ Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. If requested, the results of the state criminal background check and the results of the national criminal history background check and a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through the results of a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (7)~~{(8)}~~ (a) If~~{ a school term has begun and}~~ a certified or classified position remains unfilled *after July 31* 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 and~~{ have}~~ a *clear CA/N check*~~{letter}~~, provided by the individual~~{, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.}~~ Application for the criminal record and a request for a *clear CA/N check*~~{ letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.}~~ 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 and receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- (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, *or on the basis of a CA/N check showing substantiation of child abuse or neglect.*
- (8)~~{(9)}~~ (a) *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, the Federal Bureau of Investigation, and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.*~~{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 AND HAVE A LETTER, PROVIDED~~

~~BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES 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 *or classified* position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AND~~[HAVE]~~ A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE *APPLICANT HAS*~~EMPLOYEE IS CLEAR TO HIRE BASED ON]~~ NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES~~[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) The provisions of subsections (5), (6), (7), (8) and (9) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.]~~

~~[(11) (a) 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 and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.~~

- ~~(b) The results of the state criminal history background check and the results of the national criminal history background check, if requested, and a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through the results of a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be sent to the district superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services 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.]~~

~~(9)~~~~[(12)]~~ 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.

~~(10)~~~~[(13)]~~ Notwithstanding any law to the contrary, each certified and classified employee of the school district shall notify the superintendent if he or she has been found by the Cabinet for Health and Family Services to have abused or neglected a child, and if he or she has waived the right to appeal a substantiated finding of

child abuse or neglect or if the substantiated incident was upheld upon appeal. Any failure to report this finding shall result in the certified or classified employee being subject to dismissal or termination.

~~(II)(14)~~ The form for requesting a *CA/N check* ~~{letter, required by this section, stating an employee is clear to hire based on a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services}~~ shall be made available on the Cabinet for Health and Family Services Web site.

➔Section 2. KRS 160.151 is amended to read as follows:

- (1) (a) 1. A private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with KRS 156.160(3) may require a national and state criminal background check and require a *clear CA/N check, as defined in Section 1 of this Act*, ~~{letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services}~~ on all new certified hires in the school and student teachers assigned to the school and may require a new national and state criminal background check and require a *clear CA/N check* ~~{letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services}~~ on each certified teacher once every five (5) years of employment.
 2. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check and *were required to have* ~~{require}~~ a *clear CA/N check* ~~{letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services}~~ for previous employment may be excluded from the initial national or state criminal background checks.
 - (b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the Department of Kentucky State Police or the Administrative Office of the Courts.
 - (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 by the Department of Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Department of Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (2) If a school requires a criminal background check or requires a *clear CA/N check* ~~{letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services}~~ for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AND A LETTER FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE *APPLICANT* ~~{EMPLOYEE}~~ IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."
- (a) ~~{For purposes of this subsection, "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.}~~
 - (b) 1. ~~{The school or school board may require an adult who is permitted access to school grounds on a regularly scheduled and continuing basis pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity}{a contractor who works on school premises during school hours and may require a contractor who does not have contact with students}~~, a volunteer, or a visitor to submit to a national criminal history check by the Federal Bureau of Investigation and state criminal history background check by the Department

of Kentucky State Police or Administrative Office of the Courts and require a *clear CA/N check* ~~letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services~~.

- (b) ~~2-~~ Any request for records *from the Department of Kentucky State Police* under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police if required. 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. If a background check of child abuse and neglect records is requested, the person seeking employment shall provide to the hiring superintendent a *clear CA/N check* ~~letter from the Cabinet for Health and Family Services stating the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services~~.
- (c) ~~3-~~ 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.
- (3) (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3) or persons with a substantiated finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.
- (b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs during a school term, a nonpublic school implementing this chapter may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check or the receipt of a *clear CA/N check* ~~letter~~, provided by the individual ~~, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services~~.
- (c) Employment at a nonpublic school implementing this chapter may be contingent on the receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165 or the receipt of a *clear CA/N check* ~~letter~~, provided by the individual ~~, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services~~.
- (d) Nonpublic schools implementing this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165 or the receipt of a *clear CA/N check* ~~letter, provided by the individual, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services~~.
- (4) The form for requesting a *clear CA/N check* ~~letter, required by this section, stating an employee is clear to hire based on a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services~~ shall be made available on the Cabinet for Health and Family Services Web site.

➔ Section 3. 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 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 and assistant principals; 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 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 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) Personnel decisions at the school level shall be as follows:
 - 1. From a list of qualified 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 paragraph (i)11. of this subsection. The superintendent shall provide additional applicants to the principal upon request when qualified applicants are available. 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;
 - 2.
 - a.
 - i. If the vacancy to be filled is the position of principal, the outgoing principal shall not serve on the council during the principal selection process. The superintendent or the superintendent's designee shall serve as the chair of the council for the purpose of the hiring process and shall have voting rights during the selection process.
 - ii. Except as provided in subdivision b. of this subparagraph, the council shall have access to the applications of all persons certified for the position. The principal shall be elected on a majority vote of the membership of the council. No principal who has been previously removed from a position in the district for cause may be considered for appointment as principal. 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;
 - b. An alternative principal selection process may be used by the school council as follows:
 - i. Prior to a meeting called to select a principal, all school council members shall receive informational materials regarding Kentucky open records and open meetings laws and sign a nondisclosure agreement forbidding the sharing of information shared and discussions held in the closed session;
 - ii. The superintendent shall convene the school council and move into closed session as provided in KRS 61.810(1)(f) to confidentially recommend a candidate;
 - iii. The council shall have the option to interview the recommended candidate while in closed session; and
 - iv. After any discussion, at the conclusion of the closed session, the council shall decide, in a public meeting by majority vote of the membership of the council,

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whether to accept or reject the recommended principal candidate;

- c. If the recommended candidate is selected, and the recommended candidate accepts the offer, the name of the candidate shall be made public during the next meeting in open session;
- d.
 - i. If the recommended candidate is not accepted by the school council under subdivision b. of this subparagraph, then the process set forth in subdivision a. of this subparagraph shall apply.
 - ii. The confidentially recommended candidate's name and the discussions of the closed session shall remain confidential under KRS 61.810(1)(f), and any documents used or generated during the closed meeting shall not be subject to an open records request as provided in KRS 61.878(1)(i) and (j).
 - iii. A recommended candidate who believes a violation of this subdivision has occurred may file a written complaint with the Kentucky Board of Education.
 - iv. A school council member who is found to have disclosed confidential information regarding the proceeding of the closed session shall be subject to removal from the school council by the Kentucky Board of Education under subsection (9)(e) of this section;
3. Personnel decisions made at the school level under the authority of subparagraphs 1. and 2. of this paragraph shall be binding on the superintendent who completes the hiring process;
4. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020; and
5. Notwithstanding other provisions of this paragraph, if the applicant is the spouse of the superintendent and the applicant meets the service requirements of KRS 160.380 ~~(3)(a)(2)(e)~~, the applicant shall only be employed upon the recommendation of the principal and the approval of a majority vote of the school council;
- (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, curriculum development and responsibilities under KRS 158.6453(19);
 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 related to improving classroom teaching and learning;
 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. Adoption of an emergency plan as required in KRS 158.162;
 10. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and
 11. 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 as shown on state and local student assessments required under KRS 158.6453. 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 1 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 October 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 policies 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) All schools shall implement school-based decision making 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.
 - (e) Notwithstanding paragraph (d) of this subsection and KRS 7.410(2)(c), if the state board determines a violation of the confidentiality requirements set forth in subsection (2)(h)2. of this section by a school council member has occurred, the state board shall remove the member from the school council, and the member shall be permanently prohibited from serving on any school council in the district.
- (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.

- (12) Discretionary authority exercised under subsection (2)(h)2.b. of this section shall not violate provisions of any employer-employee bargained contract existing between the district and its employees.

➔Section 4. 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) of~~ KRS 160.380(5) 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) of~~ KRS 160.380(5) shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

➔Section 5. 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 High School 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))~~.
- (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 March 19, 2019.