

CHAPTER 32

(SB 79)

AN ACT relating to school background checks.

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) *"Administrative finding of child abuse or neglect" means a substantiated finding of child abuse or neglect issued by the Cabinet for Health and Family Services that is:*
1. *Not appealed through an administrative hearing conducted in accordance with KRS Chapter 13B;*
 2. *Upheld at an administrative hearing conducted in accordance with KRS Chapter 13B and not appealed to a Circuit Court; or*
 3. *Upheld by a Circuit Court in an appeal of the results of an administrative hearing conducted in accordance with KRS Chapter 13B;"*
- (b) 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;
- (c)~~(b)~~ "Clear CA/N check" means a letter from the Cabinet for Health and Family Services indicating that there are no ~~administrative~~~~substantiated~~ findings of child abuse or neglect relating to a specific individual;
- (d)~~(c)~~ "Relative" means father, mother, brother, sister, husband, wife, son and daughter; and
- (e)~~(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) 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 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) No superintendent shall employ a relative of a school board member of the district;
 - (c) No principal's relative shall be employed in the principal's school; and
 - (d) A relative that is ineligible for employment under paragraph (a), (b), or (c) 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) 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) 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 ***an administrative***~~[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) 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 a clear CA/N check, provided by the individual:
 - 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:
 - a. Classified and certified individuals employed by the school district prior to June 27, 2019; 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 for the previous employment.

2. The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544;
 - (c) 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; and
 - (d) A superintendent may require 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, provided by the individual.
- (7) (a) If 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 a clear CA/N check, provided by the individual. Application for the criminal record and a request for a clear CA/N check 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 *administrative* 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.
- ~~(8)(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 *an administrative finding* ~~substantiation~~ of child abuse or neglect.
- ~~(9)(8)~~ (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.
- (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 A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE APPLICANT HAS NO *ADMINISTRATIVE* 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) 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)~~ 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.
- ~~(11)~~~~(10)~~ 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.
- ~~(12)~~~~(11)~~ The form for requesting a CA/N check shall be made available on the Cabinet for Health and Family Services Web site.

Signed by Governor March 24, 2020.