

1 AN ACT relating to substitutes for certified and classified school personnel.

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

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

4 (1) As used in this section:

5 (a) "Alternative education program" means a program that exists to meet the  
6 needs of students that cannot be addressed in a traditional classroom setting  
7 but through the assignment of students to alternative classrooms, centers, or  
8 campuses that are designed to remediate academic performance, improve  
9 behavior, or provide an enhanced learning experience. Alternative education  
10 programs do not include career or technical centers or departments;

11 (b) "Contractor" means an adult who is permitted access to school grounds  
12 pursuant to a current or prospective contractual agreement with the school,  
13 school board, school district, or school-affiliated entity, at times when  
14 students are present. The term "contractor" includes an employee of a  
15 contractor;

16 (c) "Relative" means father, mother, brother, sister, husband, wife, son, daughter,  
17 aunt, uncle, son-in-law, and daughter-in-law; and

18 (d) "Vacancy" means any certified position opening created by the resignation,  
19 dismissal, nonrenewal of contract, transfer, or death of a certified staff  
20 member of a local school district, or a new position created in a local school  
21 district for which certification is required. However, if an employer-employee  
22 bargained contract contains procedures for filling certified position openings  
23 created by the resignation, dismissal, nonrenewal of contract, transfer, or death  
24 of a certified staff member, or creation of a new position for which  
25 certification is required, a vacancy shall not exist, unless certified positions  
26 remain open after compliance with those procedures.

27 (2) Except as provided in KRS 160.346:

- 1 (a) All appointments, promotions, and transfers of principals, supervisors,  
2 teachers, and other public school employees shall be made only by the  
3 superintendent of schools, who shall notify the board of the action taken. All  
4 employees of the local district shall have the qualifications prescribed by law  
5 and by the administrative regulations of the Kentucky Board of Education and  
6 of the employing board. Supervisors, principals, teachers, and other  
7 employees may be appointed by the superintendent for any school year at any  
8 time after February 1 preceding the beginning of the school year. No  
9 superintendent of schools shall appoint or transfer himself or herself to  
10 another position within the school district;
- 11 (b) When a vacancy occurs in a local school district, the superintendent shall  
12 notify the chief state school officer thirty (30) days before the position shall be  
13 filled. The chief state school officer shall keep a registry of local district  
14 vacancies which shall be made available to the public. The local school  
15 district shall post position openings in the local board office for public  
16 viewing;
- 17 (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent  
18 disruption of necessary instructional or support services of the school district,  
19 the superintendent may seek a waiver from the chief state school officer. If the  
20 waiver is approved, the appointment shall not be made until the person  
21 recommended for the position has been approved by the chief state school  
22 officer. The chief state school officer shall respond to a district's request for  
23 waiver or for approval of an appointment within two (2) working days;
- 24 (d) When a vacancy occurs in a local district, the superintendent shall conduct a  
25 search to locate minority teachers to be considered for the position. The  
26 superintendent shall, pursuant to administrative regulations of the Kentucky  
27 Board of Education, report annually the district's recruitment process and the

- 1 activities used to increase the percentage of minority teachers in the district;
- 2 (e) No relative of a superintendent of schools shall be an employee of the school  
3 district. However, this shall not apply to a relative who is a classified or  
4 certified employee of the school district for at least thirty-six (36) months  
5 prior to the superintendent assuming office, or prior to marrying a relative of  
6 the superintendent, and who is qualified for the position the employee holds.  
7 A superintendent's spouse who has previously been employed in a school  
8 system may be an employee of the school district. A superintendent's spouse  
9 who is employed under this provision shall not hold a position in which the  
10 spouse supervises certified or classified employees. A superintendent's spouse  
11 may supervise teacher aides and student teachers. However, the  
12 superintendent shall not promote a relative who continues employment under  
13 an exception of this subsection;
- 14 (f) No superintendent shall employ a relative of a school board member of the  
15 district, unless on July 13, 1990, the board member's relative is an employee  
16 of the district, the board member is holding office, and the relative was not  
17 initially hired by the district during the tenure of the board member. A relative  
18 employed in 1989-90 and initially hired during the tenure of a board member  
19 serving on July 13, 1990, may continue to be employed during the remainder  
20 of the board member's term. However, the superintendent shall not promote  
21 any relative of a school board member who continues employment under the  
22 exception of this subsection; ~~and~~
- 23 (g) 1. No principal's relative shall be employed in the principal's school, except  
24 a relative who is not the principal's spouse and who was employed in the  
25 principal's school during the 1989-90 school year.
- 26 2. No spouse of a principal shall be employed in the principal's school,  
27 except:

- 1 a. A principal's spouse who was employed in the principal's school  
 2 during the 1989-90 school year for whom there is no position for  
 3 which the spouse is certified to fill in another school operated in  
 4 the district; or
- 5 b. A principal's spouse who was employed in the 1989-90 school year  
 6 and is in a school district containing no more than one (1)  
 7 elementary school, one (1) middle school, and one (1) high school.
- 8 3. A principal's spouse who is employed in the principal's school shall be  
 9 evaluated by a school administrator other than the principal.
- 10 4. The provisions of KRS 161.760 shall not apply to any transfer made in  
 11 order to comply with the provisions of this paragraph; and

12 (h) A relative that is ineligible for employment under paragraph (e), (f), or (g)  
 13 of this subsection may be employed as a substitute for a certified or  
 14 classified employee if the relative is not:

15 1. A regular full-time or part-time employee of the district;

16 2. Accruing continuing contract status or any other right to continuous  
 17 employment;

18 3. Receiving fringe benefits other than those provided other substitutes;

19 or

20 4. Receiving preference in employment or assignment over other  
 21 substitutes.

- 22 (3) No superintendent shall assign a certified or classified staff person to an alternative  
 23 education program as part of any disciplinary action taken pursuant to KRS 161.011  
 24 or 161.790 as part of a corrective action plan established pursuant to the local  
 25 district evaluation plan.
- 26 (4) No superintendent shall employ in any position in the district any person who is a  
 27 violent offender or has been convicted of a sex crime as defined by KRS 17.165

1 which is classified as a felony. The superintendent may employ, at his discretion,  
2 persons convicted of sex crimes classified as a misdemeanor.

3 (5) (a) A superintendent shall require a national and state criminal background check  
4 on all new certified hires in the school district and student teachers assigned  
5 within the district. Excluded are certified individuals who were employed in  
6 another certified position in a Kentucky school district within six (6) months  
7 of the date of hire and who had previously submitted to a national and state  
8 criminal background check for the previous employment.

9 (b) The superintendent shall require that each new certified hire and student  
10 teacher, as set forth in paragraph (a) of this subsection, submit to a national  
11 and state criminal history background check by the Department of Kentucky  
12 State Police and the Federal Bureau of Investigation.

13 (c) All fingerprints requested under this section shall be on an applicant  
14 fingerprint card provided by the Department of Kentucky State Police. The  
15 fingerprint cards shall be forwarded to the Federal Bureau of Investigation  
16 from the Department of Kentucky State Police after a state criminal  
17 background check is conducted. The results of the state and federal criminal  
18 background check shall be sent to the hiring superintendent. Any fee charged  
19 by the Department of Kentucky State Police and the Federal Bureau of  
20 Investigation shall be an amount no greater than the actual cost of processing  
21 the request and conducting the search.

22 (d) The Education Professional Standards Board may promulgate administrative  
23 regulations to impose additional qualifications to meet the requirements of  
24 Public Law 92-544.

25 (6) (a) A superintendent shall require a state criminal background check on all  
26 classified initial hires.

27 (b) The superintendent shall require that each classified initial hire submit to a

1 state criminal history background check by the Department of Kentucky State  
2 Police. If an applicant has been a resident of Kentucky twelve (12) months or  
3 less, the superintendent may require a national criminal history background  
4 check as a condition of employment.

5 (c) Any request for records under this section shall be on an applicant fingerprint  
6 card provided by the Department of Kentucky State Police. The results of the  
7 state criminal background check and the results of the national criminal  
8 history background check, if requested under the provisions of paragraph (b)  
9 of this subsection, shall be sent to the hiring superintendent. Any fee charged  
10 by the Department of Kentucky State Police shall be an amount no greater  
11 than the actual cost of processing the request and conducting the search.

12 (7) The superintendent may require a contractor, volunteer, or visitor to submit to a  
13 national and state criminal history background check by the Department of  
14 Kentucky State Police and the Federal Bureau of Investigation. Any request for  
15 records under this section shall be on an applicant fingerprint card provided by the  
16 Department of Kentucky State Police. The results of the state criminal background  
17 check and the results of the national criminal history background check, if  
18 requested, shall be sent to the hiring superintendent. Any fee charged by the  
19 Department of Kentucky State Police shall be an amount no greater than the actual  
20 cost of processing the request and conducting the search.

21 (8) (a) If a school term has begun and a certified or classified position remains  
22 unfilled or if a vacancy occurs during a school term, a superintendent may  
23 employ an individual, who will have supervisory or disciplinary authority over  
24 minors, on probationary status pending receipt of the criminal history  
25 background check. Application for the criminal record of a probationary  
26 employee shall be made no later than the date probationary employment  
27 begins.

- 1 (b) Employment shall be contingent on the receipt of the criminal history  
2 background check documenting that the probationary employee has no record  
3 of a sex crime nor as a violent offender as defined in KRS 17.165.
- 4 (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary,  
5 probationary employment under this section shall terminate on receipt by the  
6 school district of a criminal history background check documenting a record  
7 of a sex crime or as a violent offender as defined in KRS 17.165 and no  
8 further procedures shall be required.
- 9 (d) The provisions of KRS 161.790 shall apply to terminate employment of a  
10 certified employee on the basis of a criminal record other than a record of a  
11 sex crime or as a violent offender as defined in KRS 17.165.
- 12 (9) (a) Each application or renewal form, provided by the employer to an applicant  
13 for a classified position, shall conspicuously state the following: "FOR THIS  
14 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE  
15 CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF  
16 EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL  
17 CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS  
18 A CONDITION OF EMPLOYMENT."
- 19 (b) Each application or renewal form, provided by the employer to an applicant  
20 for a certified position, shall conspicuously state the following: "FOR THIS  
21 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND  
22 STATE CRIMINAL HISTORY BACKGROUND CHECK AS A  
23 CONDITION OF EMPLOYMENT."
- 24 (c) Each application form for a district position shall require the applicant to:  
25 1. Identify the states in which he or she has maintained residency,  
26 including the dates of residency; and  
27 2. Provide picture identification.

- 1 (10) The provisions of subsections (5), (6), (7), (8) and (9) of this section shall apply to a  
2 nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- 3 (11) A school-based decision-making council parent member, as defined under KRS  
4 160.345, shall submit to a state and national fingerprint-supported criminal history  
5 background check by the Department of Kentucky State Police and the Federal  
6 Bureau of Investigation. The results of the state criminal history background check  
7 and the results of the national criminal history background check, if requested, shall  
8 be sent to the district superintendent. Any fee charged by the Department of  
9 Kentucky State Police shall be an amount no greater than the actual cost of  
10 processing the request and conducting the search. A parent member may serve prior  
11 to the receipt of the criminal history background check report but shall be removed  
12 from the council on receipt by the school district of a report documenting a record  
13 of a sex crime or criminal offense against a victim who is a minor as defined in  
14 KRS 17.500 or as a violent offender as defined in KRS 17.165, and no further  
15 procedures shall be required.
- 16 (12) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary,  
17 when an employee of the school district is charged with any offense which is  
18 classified as a felony, the superintendent may transfer the employee to a second  
19 position until such time as the employee is found not guilty, the charges are  
20 dismissed, the employee is terminated, or the superintendent determines that further  
21 personnel action is not required. The employee shall continue to be paid at the same  
22 rate of pay he or she received prior to the transfer. If an employee is charged with an  
23 offense outside of the Commonwealth, this provision may also be applied if the  
24 charge would have been treated as a felony if committed within the Commonwealth.  
25 Transfers shall be made to prevent disruption of the educational process and district  
26 operations and in the interest of students and staff and shall not be construed as  
27 evidence of misconduct.