

1 AN ACT relating to special education.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
4 READ AS FOLLOWS:

5 *The Commonwealth of Kentucky supports the education and welfare of all special*
6 *needs students. In the interest of the welfare of special needs students of Kentucky, the*
7 *Special Needs Alternative Education and Welfare Act of 2017 is hereby created. This*
8 *Act will permit an exceptional child as defined in KRS 157.200 to receive alternative*
9 *education support through scholarships to move from his or her resident public school*
10 *to a participating school as defined in Section 2 of this Act in an effort to receive the*
11 *most appropriate education for his or her educational and welfare needs.*

12 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
13 READ AS FOLLOWS:

14 *As used in Sections 1 to 8 of this Act:*

15 *(1) "Department" means the Kentucky Department of Education;*

16 *(2) "Eligible student" means any Kentucky public school student with an*
17 *individualized education program who meets the definition of exceptional*
18 *children and youth under KRS 157.200(1)(a) to (m);*

19 *(3) "Local school district" means the public school district in which a participating*
20 *nonpublic school is located;*

21 *(4) "Parent" means a parent, guardian, custodian, or other person with authority to*
22 *act on behalf of the student;*

23 *(5) "Parentally-placed student" means a student with disabilities enrolled in a*
24 *nonpublic school by his or her parents in lieu of accepting the individualized*
25 *education program proposed by the resident public school district;*

26 *(6) "Participating school" means either a public school outside the resident school*
27 *district or any nonpublic school within Kentucky that provides education to*

1 eligible students and that has notified the Kentucky Department of Education of
 2 its intention to participate in the scholarship program and comply with the
 3 requirements of Sections 1 to 8 of this Act and the administrative regulations
 4 promulgated by the Kentucky Board of Education to implement the provisions of
 5 Sections 1 to 8 of this Act;

6 (7) "Resident school district" means the public school district in which the eligible
 7 student resides; and

8 (8) "Scholarship program" means the Students with Special Needs Scholarship
 9 Program.

10 (9) "SEEK" means the Support Education Excellence in Kentucky program of
 11 funding districts found in the provisions of KRS 157.310 to 157.440.

12 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
 13 READ AS FOLLOWS:

14 (1) Notwithstanding KRS 157.280(2) and (3), beginning with the 2017-2018 school
 15 year, any parent of an eligible student who is dissatisfied with the student's
 16 progress shall qualify for the scholarship program for the student to enroll in and
 17 attend a participating school if:

18 (a) The student has an individualized education program developed in
 19 accordance with the administrative regulations of the Kentucky Board of
 20 Education;

21 (b) The student has been accepted for admission at a participating school; and

22 (c) The parent has applied for the scholarship program by the deadline
 23 established by the Kentucky Department of Education.

24 (2) (a) Upon receipt of an application for an eligible student wishing to enroll in a
 25 nonpublic participating school, the department shall:

26 1. Notify the nonpublic participating school of the request, and the
 27 nonpublic participating school shall provide the department with

- 1 documentation of:
- 2 a. The estimated costs for the nonpublic participating school to
- 3 serve the student; and
- 4 b. The costs of any assessment by the nonpublic participating
- 5 school of the student's special needs; and
- 6 2. Notify the resident school district of the request. The resident school
- 7 district shall, within three (3) business days, provide the department
- 8 with documentation of the student's current individualized education
- 9 program.
- 10 (b) The maximum scholarship granted to an eligible student attending a
- 11 nonpublic participating school shall be the lesser of:
- 12 1. The amount equal to one hundred percent (100%) of the per pupil
- 13 funding base and the corresponding add-on funds for an exceptional
- 14 child that are allotted under the Support Education Excellence in
- 15 Kentucky (SEEK) Program under KRS 157.360; or
- 16 2. The amount of the nonpublic participating school's estimated costs
- 17 documented under subparagraph (2)(a)1. of this section.
- 18 (c) Upon receipt of all documentation, the department shall determine the
- 19 amount of the scholarship and shall notify the student's parents of the
- 20 amount of the scholarship and provide a written explanation of the
- 21 determination.
- 22 (d) An eligible student who participates in the program and attends a nonpublic
- 23 participating school shall be counted, for SEEK purposes, as enrolled and
- 24 attending his or her resident school district to generate the funds for the
- 25 scholarship. The department shall deduct the scholarship amount from the
- 26 resident district's state allotment and shall send the scholarship amount for
- 27 one (1) semester to the nonpublic participating school at the beginning of

1 each semester in accordance with this paragraph. Payment shall be made
 2 payable to the student's parent and mailed by the Department of Education
 3 to the nonpublic participating school of the parent's choice, and the parent
 4 shall restrictively endorse the payment to the nonpublic participating school
 5 for deposit into the account of the nonpublic participating school.

6 (3) Upon receipt of an application for an eligible student wishing to enroll in a public
 7 participating school, the department shall notify the school district to count the
 8 student in its average daily attendance upon the student's enrollment.

9 (4) Eligibility for the scholarship program shall remain in effect until the student
 10 returns to a school in the resident district, graduates from high school, or reaches
 11 his or her twenty-first birthday.

12 (5) At any time, the student's parent may remove the student from the participating
 13 school and place the student in another participating school or return the student
 14 to the resident district. The parent shall be responsible for immediately notifying
 15 the department when a change in placement is made.

16 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
 17 READ AS FOLLOWS:

18 A resident school district shall:

19 (1) Annually notify the parents of eligible students of the Students with Special
 20 Needs Scholarship Program and provide information on how a parent may apply
 21 for the scholarship and information on a parent's rights as required by the
 22 federal Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33;

23 (2) Provide documentation of a student's current individualized education program
 24 to the department upon request;

25 (3) Provide a participating school that has admitted an eligible student with a
 26 complete copy of the student's school records while complying with the federal
 27 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. sec. 1232g;

1 (4) Provide transportation or pay for transportation for the eligible student to and
 2 from the nonpublic participating school. The resident district shall qualify for
 3 transportation funding for the student through the SEEK Program; and

4 (5) Allow a resident student in a nonpublic participating school to take state
 5 assessments if requested by the parent. The resident school district shall provide
 6 the parent with the locations and times for the student to take all the state
 7 assessments if not provided at the participating school. The student's scores shall
 8 not be counted in the resident district's accountability scores. A student in a
 9 public participating school shall take state assessments and be counted in the
 10 public participating school's accountability score if he or she meets the
 11 attendance requirements in the accountability program required by KRS
 12 158.6455 and administrative regulations promulgated by the Kentucky Board of
 13 Education.

14 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
 15 READ AS FOLLOWS:

16 The Kentucky Board of Education shall promulgate administrative regulations for the
 17 Students with Special Needs Scholarship Program regarding:

18 (1) The eligibility and participation of public and nonpublic schools, including
 19 timelines that will maximize participation in the program;

20 (2) The calculation and distribution of scholarships to eligible students, their
 21 parents, and participating schools;

22 (3) The application and approval procedures for eligible students and participating
 23 schools, including an on-line option which shall be available to parents and
 24 schools;

25 (4) The process the department shall use to prohibit a school from participating in
 26 the program if the school has:

27 (a) Intentionally and substantially misrepresented information required under

- 1 Section 6 of this Act; or
 2 (b) Failed to refund to the state any scholarship overpayments in a timely
 3 manner; and
 4 (5) The immediate notification of parents if the department decides to bar a
 5 participating school from the program.

6 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
 7 READ AS FOLLOWS:

8 To be eligible to participate in the Students with Special Needs Scholarship Program, a
 9 nonpublic school shall operate in this state and demonstrate:

10 (1) Administrative accountability. To ensure that students are treated fairly and kept
 11 safe, all participating schools shall:

12 (a) Comply with all health and safety laws and administrative regulations that
 13 apply to nonpublic schools;

14 (b) Certify that they will not discriminate in admissions on the basis of race,
 15 color, national origin, disability, or religion; and

16 (c) Comply with the requirements of KRS 160.151 related to criminal
 17 background checks;

18 (2) Financial accountability. To ensure that public funds are spent appropriately, all
 19 nonpublic participating schools shall:

20 (a) Demonstrate their financial accountability by:

21 1. Submitting a financial information report for the school that complies
 22 with uniform financial accounting standards established by the
 23 department and conducted by a certified public accountant; and

24 2. Having the auditor certify that the report is free of material
 25 misstatements. The auditor's report shall be limited in scope to those
 26 records that are necessary for the department to make payments to
 27 schools for scholarships; and

1 (b) Demonstrate their financial viability by showing they can pay any funds
 2 owed the state by:

3 1. Filing with the department, prior to the start of the school year, a
 4 surety bond payable to the state in an amount equal to the aggregate
 5 amount of the scholarship funds expected to be received during the
 6 school year for students admitted to the participating school; or

7 2. Filing with the department, prior to the start of the school year,
 8 financial information that demonstrates the school has the ability to
 9 pay to the state an aggregate amount of the scholarship funds
 10 expected to be received during the school year for students admitted to
 11 the participating school;

12 (3) Academic accountability. To ensure that schools provide academic accountability
 13 to parents of the students in the program, all participating schools shall regularly
 14 provide student progress reports to parents; and

15 (4) Participating school autonomy. A nonpublic participating school is autonomous
 16 and not an agent of the state or federal government and, therefore:

17 (a) The creation of the Students with Special Needs Scholarship Program does
 18 not expand the regulatory authority of the state, its officers, or any school
 19 district to impose any additional regulation of nonpublic schools beyond
 20 those reasonably necessary to enforce the requirements of Sections 1 to 8
 21 this Act; and

22 (b) Participating nonpublic schools shall be given the maximum freedom to
 23 provide for the educational needs of their students without governmental
 24 control.

25 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) It shall be the responsibility of a parent to select his or her child's participating

1 school, apply for admission, and apply for a Students with Special Needs
 2 Scholarship.

3 (2) At least annually the parent and the nonpublic participating school shall
 4 mutually determine the best instructional services for the student and shall not be
 5 required to implement an individualized education program developed by the
 6 resident district.

7 (3) As required by the federal Individuals with Disabilities Education Act, the local
 8 school district in which a nonpublic participating school is located shall consult
 9 with nonpublic school and parent representatives in the development of a plan
 10 utilizing a proportionate share of federal grant funds to serve parentally-placed
 11 nonpublic school students with disabilities.

12 (4) Any eligible student participating in the scholarship program shall comply with a
 13 participating school's written code of conduct.

14 (5) A parent may transfer an eligible student to another participating school at any
 15 time. The scholarship amount shall be prorated among nonpublic participating
 16 schools according to the period of attendance at each school.

17 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO
 18 READ AS FOLLOWS:

19 The Office of Education Accountability shall monitor the implementation of the
 20 Students with Special Needs Scholarship Program and report its findings to the
 21 Interim Joint Committee on Education no later than October 1, 2018, and by October 1
 22 of each odd-numbered year thereafter.

23 ➔Section 9. KRS 157.196 is amended to read as follows:

24 (1) The General Assembly declares that parents play a critical role in the education of
 25 their students. Parents have a major responsibility to assist in the education of their
 26 students and deserve respect and meaningful involvement in the decision-making
 27 process related to the students' education.

1 (2) Each exceptional student as defined in KRS 157.200 shall **be provided**~~[have]~~ an
 2 **individualized**~~[individual]~~ education **program**~~[plan]~~ that shall **address the special**
 3 **education and related services, supplementary aids, and modifications and**
 4 **supports to enable the student to advance toward measurable academic and**
 5 **functional goals, to be involved in and make progress in the general curriculum,**
 6 **to participate in extracurricular and other nonacademic activities, and to be**
 7 **educated with other students with disabilities and nondisabled students in these**
 8 **activities. A written description of the components of the individualized education**
 9 **program shall be developed by**~~[serve as the centerpiece of the student's educational~~
 10 ~~career and the communication vehicle between]~~ the **student's** parents, **the student,**
 11 **if appropriate,** and school personnel. The **written description**~~[plan]~~ shall
 12 **include**~~[enable the parents and school personnel to decide the student's educational~~
 13 ~~needs,]~~ the services needed~~[to achieve those needs,]~~ and the anticipated results,
 14 **and**~~[. The plan]~~ shall be used~~[as a document]~~ to monitor the student's progress.
 15 School personnel shall provide the parents with reports of the progress toward the
 16 student's annual goals at least as often as report cards go to nondisabled students.

17 (3) The Kentucky Board of Education shall promulgate administrative regulations
 18 establishing procedures for the development and monitoring of
 19 **individualized**~~[individual]~~ education **programs**~~[plans]~~ that are in compliance with
 20 the Federal Individuals with Disabilities Education Act, as amended. These
 21 administrative regulations shall be written in clear, easily understood language that
 22 is free of education jargon.

23 ➔Section 10. KRS 159.030 is amended to read as follows:

24 (1) The board of education of the district in which the child resides shall exempt from
 25 the requirement of attendance upon a regular public day school every child of
 26 compulsory school age:

27 (a) Who is a graduate from an accredited or an approved four (4) year high

1 school; or

2 (b) Who is enrolled and in regular attendance in a private, parochial, or church
3 regular day school. It shall be the duty of each private, parochial, or church
4 regular day school to notify the local board of education of those students in
5 attendance at the school. If a school declines, for any reason, to notify the
6 local board of education of those students in attendance, it shall so notify each
7 student's parent or legal guardian in writing, and it shall then be the duty of the
8 parent or legal guardian to give proper notice to the local board of education;
9 or

10 (c) Who is less than seven (7) years old and is enrolled and in regular attendance
11 in a private kindergarten-nursery school; or

12 (d) Whose physical or mental condition prevents or renders inadvisable
13 attendance at school or application to study; or

14 (e) Who is enrolled and in regular attendance in private, parochial, or church
15 school programs for exceptional children; or

16 (f) Who is enrolled and in regular attendance in a state-supported program for
17 exceptional children;

18 (g) For purposes of this section, "church school" shall mean a school operated as
19 a ministry of a local church, group of churches, denomination, or association
20 of churches on a nonprofit basis.

21 (2) Before granting an exemption under subsection (1)(d) of this section, the board of
22 education of the district in which the child resides shall require satisfactory
23 evidence, in the form of:

24 (a) A signed statement of a licensed physician, advanced practice registered
25 nurse, psychologist, psychiatrist, chiropractor, or public health officer, that the
26 condition of the child prevents or renders inadvisable attendance at school or
27 application to study. On the basis of such evidence, the board may exempt the

1 child from compulsory attendance. Any child who is excused from school
2 attendance more than six (6) months shall have two (2) signed statements
3 from a combination of the following professional persons: a licensed
4 physician, advanced practice registered nurse, psychologist, psychiatrist,
5 chiropractor, and health officer, except that this requirement shall not apply to
6 a child whose treating physician, advanced practice registered nurse,
7 chiropractor, or public health officer certifies that the student has a chronic
8 physical condition that prevents or renders inadvisable attendance at school or
9 application to study and is unlikely to substantially improve within one (1)
10 year; or

11 (b) An individualized~~individual~~ education program~~plan~~ specifying that
12 placement of the child with a disability at home or in a hospital is the least
13 restrictive environment for providing services.

14 Exemptions of all children under the provisions of subsection (1)(d) of this section
15 shall be reviewed annually with the evidence required being updated, except that for
16 an exceptional child whose treating physician, advanced practice registered nurse,
17 chiropractor, or public health officer certifies that the student has a chronic physical
18 condition unlikely to substantially improve within three (3) years, the child's
19 admissions and release committee shall annually consider the child's condition and
20 the existing documentation to determine whether updated evidence is required.
21 Updated evidence shall be provided for a child upon determination of need by the
22 admissions and release committee, or at least every three (3) years.

23 (3) For any child who is excluded under the provisions of subsection (1)(d) of this
24 section, home, hospital, institutional, or other regularly scheduled and suitable
25 instruction meeting standards, rules, and regulations of the Kentucky Board of
26 Education shall be provided.

27 ➔Section 11. KRS 605.115 is amended to read as follows:

1 The commissioner of the Department of Juvenile Justice and the secretary of the Cabinet
2 for Health and Family Services, with the cooperation of the Kentucky Board of Education
3 and the commissioner of education, shall implement policies to assure that local school
4 districts providing a funding match shall have direct access to Medicaid funding as
5 Medicaid providers for the provision of health-related services to eligible children with
6 disabilities under the age of twenty-one (21) years of age. They shall develop policies and
7 procedures so the Department of Education can transfer the local school districts'
8 matching funds to the Department for Medicaid Services. They shall also review state and
9 federal statutes and regulations to determine the eligibility of local school districts to
10 receive Medicaid reimbursement for health-related services identified ~~in~~^{on} a child's
11 ~~individualized~~^{individual} education ~~program~~^{plan}.