

1 AN ACT relating to school employees.

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.
- 12 (3) No superintendent shall assign a certified or classified staff person to an alternative  
13 education program as part of any disciplinary action taken pursuant to KRS 161.011  
14 or 161.790 as part of a corrective action plan established pursuant to the local  
15 district evaluation plan.
- 16 (4) No superintendent shall employ in any position in the district any person who is a  
17 violent offender or has been convicted of a sex crime as defined by KRS 17.165  
18 which is classified as a felony. The superintendent may employ, at his discretion,  
19 persons convicted of sex crimes classified as a misdemeanor.
- 20 (5) (a) A superintendent shall require a national and state criminal background check  
21 on all new certified hires in the school district and student teachers assigned  
22 within the district. Excluded are certified individuals who were employed in  
23 another certified position in a Kentucky school district within six (6) months  
24 of the date of hire and who had previously submitted to a national and state  
25 criminal background check for the previous employment.
- 26 (b) The superintendent shall require that each new certified hire and student  
27 teacher, as set forth in paragraph (a) of this subsection, submit to a national

1 and state criminal history background check by the Department of Kentucky  
2 State Police and the Federal Bureau of Investigation.

3 (c) All fingerprints requested under this section shall be on an applicant  
4 fingerprint card provided by the Department of Kentucky State Police. The  
5 fingerprint cards shall be forwarded to the Federal Bureau of Investigation  
6 from the Department of Kentucky State Police after a state criminal  
7 background check is conducted. The results of the state and federal criminal  
8 background check shall be sent to the hiring superintendent. Any fee charged  
9 by the Department of Kentucky State Police and the Federal Bureau of  
10 Investigation shall be an amount no greater than the actual cost of processing  
11 the request and conducting the search.

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

15 (6) (a) A superintendent shall require a ~~state~~ criminal background check on all  
16 classified initial hires.

17 (b) The superintendent shall require that each classified initial hire submit to a  
18 state criminal history background check by the Department of Kentucky State  
19 Police, **or at the sole discretion of the superintendent,** ~~[- If an applicant has~~  
20 ~~been a resident of Kentucky twelve (12) months or less, the superintendent~~  
21 ~~may require]~~ a national criminal history background check as a condition of  
22 employment.

23 (c) Any request for records under this section shall be on an applicant fingerprint  
24 card provided by the Department of Kentucky State Police. The results of the  
25 state criminal background check and the results of the national criminal  
26 history background check, if requested under the provisions of paragraph (b)  
27 of this subsection, shall be sent to the hiring superintendent. Any fee charged

1 by the Department of Kentucky State Police shall be an amount no greater  
2 than the actual cost of processing the request and conducting the search.

3 (7) The superintendent may require a contractor, volunteer, or visitor to submit to a  
4 national and state criminal history background check by the Department of  
5 Kentucky State Police and the Federal Bureau of Investigation. Any request for  
6 records under this section shall be on an applicant fingerprint card provided by the  
7 Department of Kentucky State Police. The results of the state criminal background  
8 check and the results of the national criminal history background check, if  
9 requested, shall be sent to the hiring superintendent. Any fee charged by the  
10 Department of Kentucky State Police shall be an amount no greater than the actual  
11 cost of processing the request and conducting the search.

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

19 (b) Employment shall be contingent on the receipt of the criminal history  
20 background check documenting that the probationary employee has no record  
21 of a sex crime nor as a violent offender as defined in KRS 17.165.

22 (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary,  
23 probationary employment under this section shall terminate on receipt by the  
24 school district of a criminal history background check documenting a record  
25 of a sex crime or as a violent offender as defined in KRS 17.165 and no  
26 further procedures shall be required.

27 (d) The provisions of KRS 161.790 shall apply to terminate employment of a

1 certified employee on the basis of a criminal record other than a record of a  
2 sex crime or as a violent offender as defined in KRS 17.165.

3 (9) (a) Each application or renewal form, provided by the employer to an applicant  
4 for a classified position, shall conspicuously state the following: "FOR THIS  
5 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE  
6 CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF  
7 EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL  
8 CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS  
9 A CONDITION OF EMPLOYMENT."

10 (b) Each application or renewal form, provided by the employer to an applicant  
11 for a certified position, shall conspicuously state the following: "FOR THIS  
12 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND  
13 STATE CRIMINAL HISTORY BACKGROUND CHECK AS A  
14 CONDITION OF EMPLOYMENT."

15 (c) Each application form for a district position shall require the applicant to:  
16 1. Identify the states in which he or she has maintained residency,  
17 including the dates of residency; and  
18 2. Provide picture identification.

19 (10) The provisions of subsections (5), (6), (7), (8) and (9) of this section shall apply to a  
20 nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.

21 (11) A school-based decision-making council parent member, as defined under KRS  
22 160.345, shall submit to a state and national fingerprint-supported criminal history  
23 background check by the Department of Kentucky State Police and the Federal  
24 Bureau of Investigation. The results of the state criminal history background check  
25 and the results of the national criminal history background check, if requested, shall  
26 be sent to the district superintendent. Any fee charged by the Department of  
27 Kentucky State Police shall be an amount no greater than the actual cost of

1 processing the request and conducting the search. A parent member may serve prior  
2 to the receipt of the criminal history background check report but shall be removed  
3 from the council on receipt by the school district of a report documenting a record  
4 of a sex crime or criminal offense against a victim who is a minor as defined in  
5 KRS 17.500 or as a violent offender as defined in KRS 17.165, and no further  
6 procedures shall be required.

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