

1 AN ACT relating to school employees and declaring an emergency.

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

3 ➔Section 1. KRS 160.380 (Effective July 1, 2018) 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 students
14 are present. The term "contractor" includes an employee of a contractor;

15 (c) "Relative" means father, mother, brother, sister, husband, wife, son, ***and***
16 ~~daughter[, aunt, uncle, son-in-law, and daughter-in-law]~~; and

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

26 (2) Except as provided in KRS 160.346:

27 (a) All appointments, promotions, and transfers of principals, supervisors,

1 teachers, and other public school employees shall be made only by the
2 superintendent of schools, who shall notify the board of the action taken. All
3 employees of the local district shall have the qualifications prescribed by law
4 and by the administrative regulations of the Kentucky Board of Education and
5 of the employing board. Supervisors, principals, teachers, and other employees
6 may be appointed by the superintendent for any school year at any time after
7 February 1 preceding the beginning of the school year. No superintendent of
8 schools shall appoint or transfer himself or herself to another position within
9 the school district;

10 (b) When a vacancy occurs in a local school district, the superintendent shall notify
11 the chief state school officer thirty (30) days before the position shall be filled.
12 The chief state school officer shall keep a registry of local district vacancies
13 which shall be made available to the public. The local school district shall post
14 position openings in the local board office for public viewing;

15 (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent
16 disruption of necessary instructional or support services of the school district,
17 the superintendent may seek a waiver from the chief state school officer. If the
18 waiver is approved, the appointment shall not be made until the person
19 recommended for the position has been approved by the chief state school
20 officer. The chief state school officer shall respond to a district's request for
21 waiver or for approval of an appointment within two (2) working days;

22 (d) When a vacancy occurs in a local district, the superintendent shall conduct a
23 search to locate minority teachers to be considered for the position. The
24 superintendent shall, pursuant to administrative regulations of the Kentucky
25 Board of Education, report annually the district's recruitment process and the
26 activities used to increase the percentage of minority teachers in the district;

27 (e) No relative of a superintendent of schools shall be an employee of the school

1 district. However, this shall not apply to a relative who is a classified or
 2 certified employee of the school district for at least thirty-six (36) months prior
 3 to the superintendent assuming office, or prior to marrying a relative of the
 4 superintendent, and who is qualified for the position the employee holds. A
 5 superintendent's spouse who has previously been employed in a school system
 6 may be an employee of the school district. A superintendent's spouse who is
 7 employed under this provision shall not hold a position in which the spouse
 8 supervises certified or classified employees. A superintendent's spouse may
 9 supervise teacher aides and student teachers. However, the superintendent
 10 shall not promote a relative who continues employment under an exception of
 11 this subsection;

12 (f) No superintendent shall employ a relative of a school board member of the
 13 district~~[- unless on July 13, 1990, the board member's relative is an employee~~
 14 ~~of the district, the board member is holding office, and the relative was not~~
 15 ~~initially hired by the district during the tenure of the board member. A relative~~
 16 ~~employed in 1989-90 and initially hired during the tenure of a board member~~
 17 ~~-serving on July 13, 1990, may continue to be employed during the remainder~~
 18 ~~of the board member's term. However, the superintendent shall not promote~~
 19 ~~any relative of a school board member who continues employment under the~~
 20 ~~exception of this subsection];~~

21 (g) 1. No principal's relative shall be employed in the principal's school, except
 22 a relative who is not the principal's spouse and who was employed in the
 23 principal's school during the 1989-90 school year.

24 2. No spouse of a principal shall be employed in the principal's school,
 25 except:

26 a. A principal's spouse who was employed in the principal's school
 27 during the 1989-90 school year for whom there is no position for

- 1 which the spouse is certified to fill in another school operated in the
2 district; or
- 3 b. A principal's spouse who was employed in the 1989-90 school year
4 and is in a school district containing no more than one (1)
5 elementary school, one (1) middle school, and one (1) high school.
- 6 3. A principal's spouse who is employed in the principal's school shall be
7 evaluated by a school administrator other than the principal.
- 8 4. The provisions of KRS 161.760 shall not apply to any transfer made in
9 order to comply with the provisions of this paragraph; and
- 10 (h) A relative that is ineligible for employment under paragraph (e), (f), or (g) of
11 this subsection may be employed as a substitute for a certified or classified
12 employee if the relative is not:
- 13 1. A regular full-time or part-time employee of the district;
- 14 2. Accruing continuing contract status or any other right to continuous
15 employment;
- 16 3. Receiving fringe benefits other than those provided other substitutes or
17 4. Receiving preference in employment or assignment over other
18 substitutes.
- 19 (3) No superintendent shall assign a certified or classified staff person to an alternative
20 education program as part of any disciplinary action taken pursuant to KRS 161.011
21 or 161.790 as part of a corrective action plan established pursuant to the local
22 district evaluation plan.
- 23 (4) No superintendent shall employ in any position in the district any person who is a
24 violent offender or has been convicted of a sex crime as defined by KRS 17.165
25 which is classified as a felony or persons with a substantiated finding of child abuse
26 or neglect in records maintained by the Cabinet for Health and Family Services. The
27 superintendent may employ, at his discretion, except at a Kentucky Educational

1 Collaborative for State Agency Children program, persons convicted of sex crimes
2 classified as a misdemeanor.

3 (5) (a) A superintendent shall require a national and state criminal background check
4 and require a letter, provided by the individual, from the Cabinet for Health
5 and Family Services indicating the individual is clear to hire based on no
6 findings of substantiated child abuse or neglect found through a background
7 check of child abuse and neglect records maintained by the Cabinet for Health
8 and Family Services on all new certified hires in the school district and student
9 teachers assigned within the district. Excluded are certified individuals who
10 were employed in another certified position in a Kentucky school district
11 within six (6) months of the date of hire and who had previously submitted to a
12 national and state criminal background check and who have a letter, provided
13 by the individual, from the Cabinet for Health and Family Services stating the
14 employee is clear to hire based on no findings of substantiated child abuse or
15 neglect found through a background check of child abuse and neglect records
16 maintained by the Cabinet for Health and Family Services for the previous
17 employment.

18 (b) The superintendent shall require that each new certified hire and student
19 teacher, as set forth in paragraph (a) of this subsection, submit to a national
20 and state criminal history background check by the Department of Kentucky
21 State Police and the Federal Bureau of Investigation and have a letter,
22 provided by the individual, from the Cabinet for Health and Family Services
23 stating the employee is clear to hire based on no findings of substantiated child
24 abuse or neglect found through a background check of child abuse and neglect
25 records maintained by the Cabinet for Health and Family Services.

26 (c) All fingerprints requested under this section shall be on an applicant fingerprint
27 card provided by the Department of Kentucky State Police. The fingerprint

1 cards shall be forwarded to the Federal Bureau of Investigation from the
2 Department of Kentucky State Police after a state criminal background check
3 is conducted. The results of the state and federal criminal background check
4 shall be sent to the hiring superintendent. Any fee charged by the Department
5 of Kentucky State Police, the Federal Bureau of Investigation, and the Cabinet
6 for Health and Family Services shall be an amount no greater than the actual
7 cost of processing the request and conducting the search.

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

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

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

24 (c) Any request for any criminal background records under this section shall be on
25 an applicant fingerprint card provided by the Department of Kentucky State
26 Police. The results of the state criminal background check and the results of
27 the national criminal history background check, if requested under paragraph

1 (b) of this subsection, shall be sent to the hiring superintendent. Any fee
2 charged by the Department of Kentucky State Police and the Cabinet for
3 Health and Family Services shall be an amount no greater than the actual cost
4 of processing the request and conducting the search.

5 (7) (a) The superintendent shall require a contractor who works on school premises
6 during school hours and may require a contractor who does not have contact
7 with students, a volunteer, or a visitor to submit to a national and state
8 criminal history background check by the Department of Kentucky State
9 Police and the Federal Bureau of Investigation and have a letter, provided by
10 the individual, from the Cabinet for Health and Family Services stating the
11 employee is clear to hire based on no findings of substantiated child abuse or
12 neglect found through a background check of child abuse and neglect records
13 maintained by the Cabinet for Health and Family Services.

14 (b) Any request for records under this section shall be on an applicant fingerprint
15 card provided by the Department of Kentucky State Police. If requested, the
16 results of the state criminal background check and the results of the national
17 criminal history background check and a letter, provided by the individual,
18 from the Cabinet for Health and Family Services stating the employee is clear
19 to hire based on no findings of substantiated child abuse or neglect found
20 through the results of a background check of child abuse and neglect records
21 maintained by the Cabinet for Health and Family Services shall be sent to the
22 hiring superintendent. Any fee charged by the Department of Kentucky State
23 Police and the Cabinet for Health and Family Services shall be an amount no
24 greater than the actual cost of processing the request and conducting the
25 search.

26 (8) (a) If a school term has begun and a certified or classified position remains unfilled
27 or if a vacancy occurs during a school term, a superintendent may employ an

1 individual, who will have supervisory or disciplinary authority over minors, on
2 probationary status pending receipt of the criminal history background check
3 and have a letter, provided by the individual, from the Cabinet for Health and
4 Family Services stating the employee is clear to hire based on no findings of
5 substantiated child abuse or neglect found through a background check of
6 child abuse and neglect records maintained by the Cabinet for Health and
7 Family Services. Application for the criminal record and a request for a letter,
8 provided by the individual, from the Cabinet for Health and Family Services
9 stating the employee is clear to hire based on no findings of substantiated child
10 abuse or neglect found through a background check of child abuse and neglect
11 records maintained by the Cabinet for Health and Family Services of a
12 probationary employee shall be made no later than the date probationary
13 employment begins.

14 (b) Employment shall be contingent on the receipt of the criminal history
15 background check documenting that the probationary employee has no record
16 of a sex crime nor as a violent offender as defined in KRS 17.165 and receipt
17 of a letter, provided by the individual, from the Cabinet for Health and Family
18 Services stating the employee is clear to hire based on no findings of
19 substantiated child abuse or neglect found through a background check of
20 child abuse and neglect records maintained by the Cabinet for Health and
21 Family Services.

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 of
25 a sex crime or as a violent offender as defined in KRS 17.165 and no further
26 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 sex
2 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 for
4 a classified position, shall conspicuously state the following: "FOR THIS
5 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE
6 CRIMINAL HISTORY BACKGROUND CHECK AND HAVE A LETTER,
7 PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR
8 HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS
9 CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED
10 CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND
11 CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED
12 BY THE CABINET FOR HEALTH AND FAMILY SERVICES AS A
13 CONDITION OF EMPLOYMENT. UNDER CERTAIN
14 CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY
15 BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF
16 EMPLOYMENT."

17 (b) Each application or renewal form, provided by the employer to an applicant for
18 a certified position, shall conspicuously state the following: "FOR THIS TYPE
19 OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND
20 STATE CRIMINAL HISTORY BACKGROUND CHECK AND HAVE A
21 LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET
22 FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS
23 CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED
24 CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND
25 CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED
26 BY THE CABINET FOR HEALTH AND FAMILY SERVICES AS A
27 CONDITION OF EMPLOYMENT."

1 (c) Each application form for a district position shall require the applicant to:

2 1. Identify the states in which he or she has maintained residency, including
3 the dates of residency; and

4 2. Provide picture identification.

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

7 (11) (a) A school-based decision-making council parent member, as defined under KRS
8 160.345, shall submit to a state and national fingerprint-supported criminal
9 history background check by the Department of Kentucky State Police and the
10 Federal Bureau of Investigation and have a letter, provided by the individual,
11 from the Cabinet for Health and Family Services stating the employee is clear
12 to hire based on no findings of substantiated child abuse or neglect found
13 through a background check of child abuse and neglect records maintained by
14 the Cabinet for Health and Family Services.

15 (b) The results of the state criminal history background check and the results of
16 the national criminal history background check, if requested, and a letter,
17 provided by the individual, from the Cabinet for Health and Family Services
18 stating the employee is clear to hire based on no findings of substantiated child
19 abuse or neglect found through the results of a background check of child
20 abuse and neglect records maintained by the Cabinet for Health and Family
21 Services shall be sent to the district superintendent. Any fee charged by the
22 Department of Kentucky State Police and the Cabinet for Health and Family
23 Services shall be an amount no greater than the actual cost of processing the
24 request and conducting the search. A parent member may serve prior to the
25 receipt of the criminal history background check report but shall be removed
26 from the council on receipt by the school district of a report documenting a
27 record of a sex crime or criminal offense against a victim who is a minor as

1 defined in KRS 17.500 or as a violent offender as defined in KRS 17.165, and
2 no further procedures shall be required.

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

15 (13) Notwithstanding any law to the contrary, each certified and classified employee of
16 the school district shall notify the superintendent if he or she has been found by the
17 Cabinet for Health and Family Services to have abused or neglected a child, and if he
18 or she has waived the right to appeal a substantiated finding of child abuse or neglect
19 or if the substantiated incident was upheld upon appeal. Any failure to report this
20 finding shall result in the certified or classified employee being subject to dismissal or
21 termination.

22 (14) The form for requesting a letter, required by this section, stating an employee is clear
23 to hire based on a background check of child abuse and neglect records maintained
24 by the Cabinet for Health and Family Services shall be made available on the Cabinet
25 for Health and Family Services Web site.

26 ➔Section 2. Whereas this Act is needed to coincide with 2017 Ky. Acts Ch. 115,
27 sec. 3, which has an effective date of July 1, 2018, an emergency is declared to exist, and

1 this Act takes effect on July 1, 201