

1 AN ACT relating to school district vacancies.

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  
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 fifteen (15)~~thirty (30)~~ days before the  
13 position shall be filled. The chief state school officer shall keep a registry of  
14 local district vacancies which shall be made available to the public. The local  
15 school 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 fifteen (15)~~thirty (30)~~ days'  
18 time to prevent disruption of necessary instructional or support services of the  
19 school district, the superintendent may seek a waiver from the chief state  
20 school officer. If the waiver is approved, the appointment shall not be made  
21 until the person recommended for the position has been approved by the chief  
22 state school officer. The chief state school officer shall respond to a district's  
23 request for waiver or for approval of an appointment within two (2) working  
24 days;
- 25 (d) When a vacancy occurs in a local district, the superintendent shall conduct a  
26 search to locate minority teachers to be considered for the position. The  
27 superintendent shall, pursuant to administrative regulations of the Kentucky

1 Board of Education, report annually the district's recruitment process and the  
2 activities used to increase the percentage of minority teachers in the district;

3 (e) No relative of a superintendent of schools shall be an employee of the school  
4 district. However, this shall not apply to a relative who is a classified or  
5 certified employee of the school district for at least thirty-six (36) months  
6 prior to the superintendent assuming office, or prior to marrying a relative of  
7 the superintendent, and who is qualified for the position the employee holds.  
8 A superintendent's spouse who has previously been employed in a school  
9 system may be an employee of the school district. A superintendent's spouse  
10 who is employed under this provision shall not hold a position in which the  
11 spouse supervises certified or classified employees. A superintendent's spouse  
12 may supervise teacher aides and student teachers. However, the  
13 superintendent shall not promote a relative who continues employment under  
14 an exception of this subsection;

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

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

27 2. No spouse of a principal shall be employed in the principal's school,

- 1           except:
- 2           a.    A principal's spouse who was employed in the principal's school
- 3                during the 1989-90 school year for whom there is no position for
- 4                which the spouse is certified to fill in another school operated in
- 5                the district; or
- 6           b.    A principal's spouse who was employed in the 1989-90 school year
- 7                and is in a school district containing no more than one (1)
- 8                elementary school, one (1) middle school, and one (1) high school.
- 9           3.    A principal's spouse who is employed in the principal's school shall be
- 10               evaluated by a school administrator other than the principal.
- 11           4.    The provisions of KRS 161.760 shall not apply to any transfer made in
- 12               order to comply with the provisions of this paragraph; and
- 13   (h) A relative that is ineligible for employment under paragraph (e), (f), or (g) of
- 14       this subsection may be employed as a substitute for a certified or classified
- 15       employee if the relative is not:
  - 16           1.    A regular full-time or part-time employee of the district;
  - 17           2.    Accruing continuing contract status or any other right to continuous
  - 18               employment;
  - 19           3.    Receiving fringe benefits other than those provided other substitutes 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 or persons with a substantiated finding of child abuse  
2 or neglect in records maintained by the Cabinet for Health and Family Services. The  
3 superintendent may employ, at his discretion, except at a Kentucky Educational  
4 Collaborative for State Agency Children program, persons convicted of sex crimes  
5 classified as a misdemeanor.

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

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

1 neglect records maintained by the Cabinet for Health and Family Services.

2 (c) All fingerprints requested under this section shall be on an applicant  
3 fingerprint card provided by the Department of Kentucky State Police. The  
4 fingerprint cards shall be forwarded to the Federal Bureau of Investigation  
5 from the Department of Kentucky State Police after a state criminal  
6 background check is conducted. The results of the state and federal criminal  
7 background check shall be sent to the hiring superintendent. Any fee charged  
8 by the Department of Kentucky State Police, the Federal Bureau of  
9 Investigation, and the Cabinet for Health and Family Services shall be an  
10 amount no greater than the actual cost of processing the request and  
11 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 national and state criminal background check  
16 and require a letter, provided by the individual, from the Cabinet for Health  
17 and Family Services stating the employee is clear to hire based on no findings  
18 of substantiated child abuse or neglect found through a background check of  
19 child abuse and neglect records maintained by the Cabinet for Health and  
20 Family Services on all classified initial hires.

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

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

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

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

1 greater than the actual cost of processing the request and conducting the  
2 search.

3 (8) (a) If a school term has begun and a certified or classified position remains  
4 unfilled or if a vacancy occurs during a school term, a superintendent may  
5 employ an individual, who will have supervisory or disciplinary authority over  
6 minors, on probationary status pending receipt of the criminal history  
7 background check and have a letter, provided by the individual, from the  
8 Cabinet for Health and Family Services stating the employee is clear to hire  
9 based on no findings of substantiated child abuse or neglect found through a  
10 background check of child abuse and neglect records maintained by the  
11 Cabinet for Health and Family Services. Application for the criminal record  
12 and a request for a letter, provided by the individual, from the Cabinet for  
13 Health and Family Services stating the employee is clear to hire based on no  
14 findings of substantiated child abuse or neglect found through a background  
15 check of child abuse and neglect records maintained by the Cabinet for Health  
16 and Family Services of a probationary employee shall be made no later than  
17 the date probationary employment begins.

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

26 (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary,  
27 probationary employment under this section shall terminate on receipt by the



1 school district of a criminal history background check documenting a record  
2 of a sex crime or as a violent offender as defined in KRS 17.165 and no  
3 further procedures shall be required.

4 (d) The provisions of KRS 161.790 shall apply to terminate employment of a  
5 certified employee on the basis of a criminal record other than a record of a  
6 sex crime or as a violent offender as defined in KRS 17.165.

7 (9) (a) Each application or renewal form, provided by the employer to an applicant  
8 for a classified position, shall conspicuously state the following: "FOR THIS  
9 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE  
10 CRIMINAL HISTORY BACKGROUND CHECK AND HAVE A LETTER,  
11 PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH  
12 AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO  
13 HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE  
14 OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF  
15 CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE  
16 CABINET FOR HEALTH AND FAMILY SERVICES AS A CONDITION  
17 OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A  
18 NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE  
19 REQUIRED AS A CONDITION OF EMPLOYMENT."

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

1 CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED  
2 BY THE CABINET FOR HEALTH AND FAMILY SERVICES AS A  
3 CONDITION OF EMPLOYMENT."

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

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

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

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

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

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

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

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

1 on the Cabinet for Health and Family Services Web site.