

1 AN ACT relating to special education.

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

3 ➔Section 1. KRS 157.196 is amended to read as follows:

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

8 (2) Each exceptional student as defined in KRS 157.200 shall have an individual
9 education plan that shall serve as the centerpiece of the student's educational career
10 and the communication vehicle between the parents and school personnel. The plan
11 shall enable the parents and school personnel to decide the student's educational
12 needs, the services needed to achieve those needs, and the anticipated results. The
13 plan shall be used as a document to monitor the student's progress. School
14 personnel shall provide the parents with reports of the progress toward the student's
15 annual goals at least as often as report cards go to nondisabled students.

16 (3) The Kentucky Board of Education shall promulgate administrative regulations
17 establishing procedures for the development and monitoring of individual education
18 plans that are in compliance with the Federal Individuals with Disabilities
19 Education Act, as amended. ***These administrative regulations shall establish***
20 ***procedures to ensure that each exceptional child as defined in Section 3 of this***
21 ***Act has the equal opportunity to participate in the full range of educational***
22 ***programs offered to their peers by the school or other state agency or political***
23 ***subdivision of the state.*** These administrative regulations shall be written in clear,
24 easily understood language that is free of education jargon.

25 ➔Section 2. KRS 157.224 is amended to read as follows:

26 (1) The Commonwealth of Kentucky is committed to providing ***each exceptional child***
27 ***or youth with*** a comprehensive educational program ***which includes equal access***

1 to the full range of educational programs, such as enrichment, accelerated
2 learning as defined in KRS 158.6453, dual credit and dual enrollment as defined
3 in KRS 158.007, internships, field trips, vocational and industry training, and
4 extra-curricular clubs and athletics~~[for its exceptional children and youth].~~ The
5 Department of Education coordinates, directs, and monitors that program, ensuring
6 availability to each exceptional child and youth. State direction and
7 implementation of a statewide special education program is manifested in the
8 biennial appropriation of funds to assure a quality educational opportunity for
9 exceptional children and youth~~[in existing, locally operated, classrooms].~~

10 (2) All county and independent boards of education shall operate special education
11 programs pursuant to an annual application which has been approved by the
12 Kentucky Department of Education pursuant to standards set out in administrative
13 regulations promulgated by the Kentucky Board of Education. If any county or
14 independent board of education fails to operate and implement special education
15 programs in accordance with the standards, the application of the county or
16 independent board of education for funding pursuant to KRS 157.360 may be
17 considered insufficient and the add-on funds generated under that statute may be
18 withheld by the Kentucky Board of Education until the program is in compliance
19 with all substantive requirements designed to ensure that students with disabilities
20 receive an appropriate education under the Federal Individuals with Disabilities
21 Education Act, as amended. The add-on funds shall not be withheld until the district
22 has had the benefit of intense assistance from the Department of Education, a
23 Kentucky Special Education Mentor under the provisions of KRS 157.197 or other
24 assistance approved by the department for at least two (2) years. The superintendent
25 of each local school district shall certify its enrollment of exceptional children and
26 youth to the Department of Education. The department shall audit student
27 enrollment and monitor local district compliance in accordance with Kentucky

- 1 Board of Education administrative regulations.
- 2 (3) The Kentucky Board of Education administrative regulations shall set forth the data
3 local school districts shall submit in their annual applications and reports. The data
4 shall be reported in the same format as data submitted to the Department of
5 Education for all other students and shall include, but not be limited to:
- 6 (a) The number of students who are suspended, expelled, and quit school
7 annually;
- 8 (b) The success of students placed in various classroom settings including, but not
9 limited to, regular classrooms, resource rooms, self-contained classrooms, and
10 vocational programs as measured by the state assessment program; and
- 11 (c) Information about students' successful transition to adult life.
- 12 (4) Local school districts and schools found to be noncompliant with state board
13 administrative regulations shall develop an improvement plan that shall be
14 submitted to the Department of Education for approval. Local school districts shall
15 use specialized resources in the development of the plan which may include
16 universities, regional resource centers, professional organizations, and constituent
17 advocacy groups.
- 18 (5) There is hereby created a special education trust fund to receive the funds withheld
19 under subsection (2) of this section and interest accrued from the funds invested.
20 The funds and interest shall not lapse, but shall be returned to the district when it is
21 in compliance with all substantive requirements designed to ensure that students
22 with disabilities receive an appropriate education under the Federal Individuals with
23 Disabilities Education Act, as amended.
- 24 (6) All administrative hearings conducted under authority of this section shall be
25 conducted in accordance with KRS Chapter 13B. The provisions of KRS Chapter
26 13B notwithstanding, the decision of the hearing officer in hearings under this
27 section shall be the final order and shall be rendered pursuant to 34 C.F.R. 300.511.

1 A parent, public agency, or eligible student may only request the administrative
2 hearing within three (3) years of the date the parent, public agency, or eligible
3 student knew about the alleged action that forms the basis for the complaint, unless
4 a longer period is reasonable because the violation is continuing. This three (3) year
5 limit shall not limit the introduction of evidence older than three (3) years if the
6 evidence is relevant to the complaint and shall not apply to the parent or the eligible
7 student if the parent or eligible student was prevented from requesting the hearing
8 due to:

- 9 (a) Failure of the local educational agency to provide prior written or procedural
10 safeguards notices;
- 11 (b) False representations that the local educational agency was attempting to
12 resolve the problem forming the basis of the complaint; or
- 13 (c) The local educational agency's withholding of information relevant to the
14 hearing issues from the parent.

15 ➔Section 3. KRS 157.200 is amended to read as follows:

- 16 (1) "Exceptional children and youth" means persons under twenty-one (21) years of age
17 who differ in one (1) or more respects from same-age peers in physical, mental,
18 learning, emotional, or social characteristics and abilities to such a degree that they
19 need special educational programs or services for them to benefit from the regular
20 or usual facilities or educational programs of the public schools in the districts in
21 which they reside. The Department of Education, through administrative regulations
22 promulgated by the Kentucky Board of Education, shall interpret the statutory
23 definitions of exceptionality. An exceptionality is any trait so defined in this section
24 or by administrative regulations promulgated by the Kentucky Board of Education.
25 Requirements of average daily attendance for exceptional classes shall be regulated
26 by statute, or in the absence of direction by administrative regulations promulgated
27 by the Kentucky Board of Education. Categories of exceptionalities included within,

1 but not limited by, this definition are as follows:

2 (a) "Orthopedic impairment" means a severe physical impairment of bone or
3 muscle which adversely affects educational performance to the extent that
4 specially designed instruction is required for the pupil to benefit from
5 education. The term includes physical impairments caused by congenital
6 anomaly, disease, and from other causes;

7 (b) "Other health impaired" means limited strength, vitality, or alertness,
8 including a heightened alertness to environmental stimuli, due to a chronic or
9 acute health problem which adversely affects educational performance to the
10 extent that specially designed instruction is required for the pupil to benefit
11 from education. Chronic health problems may include, but are not be limited
12 to, a heart condition, tuberculosis, sickle cell anemia, hemophilia, epilepsy,
13 rheumatic fever, nephritis, asthma, lead poisoning, leukemia, diabetes,
14 attention deficit disorder, attention deficit hyperactive disorder, or acquired
15 immune deficiency syndrome;

16 (c) "Speech or language impairment" means a communication disorder such as
17 stuttering, impaired articulation, impaired language, impaired voice, delayed
18 acquisition of language, or absence of language that adversely affects
19 educational performance to the extent that specially designed instruction is
20 required for the pupil to benefit from education;

21 (d) "Hearing impairment" means a physiological hearing loss:

22 1. Ranging from mild to profound, which is either permanent or
23 fluctuating, and of such a degree that the pupil is impaired in the
24 processing of linguistic information via the auditory channel either with
25 or without amplification; or

26 2. That adversely affects educational performance so that specially
27 designed instruction is required for the child or youth to benefit from

1 education.

2 The term shall include both deaf and hard of hearing children;

3 (e) "Mental disability" means a deficit or delay in intellectual and adaptive
4 behavior functioning, which adversely affects educational performance to the
5 extent that specially designed instruction is required for the pupil to benefit
6 from education, and which is typically manifested during the developmental
7 period;

8 (f) "Specific learning disability" means a disorder in one (1) or more of the
9 psychological processes primarily involved in understanding or using spoken
10 or written language, which selectively and significantly interferes with the
11 acquisition, integration, or application of listening, speaking, reading, writing,
12 reasoning, or mathematical abilities. "Specific learning disability" may include
13 conditions such as dyslexia, dyscalculia, dysgraphia, developmental aphasia,
14 or perceptual motor disabilities. The disorder is lifelong, intrinsic to the
15 individual, and adversely affects educational performance to the extent that
16 specially designed instruction is required in order for the pupil to benefit from
17 education. Determination of the existence of a specific learning disability shall
18 include documentation that a child does not make sufficient progress in
19 meeting age or grade-level content standards when provided with appropriate
20 instruction and learning experiences delivered by qualified personnel,
21 including the child's response to scientific, research-based interventions and
22 additional information derived from an individual evaluation. The term does
23 not include a learning problem which is primarily the result of:

- 24 1. A hearing impairment;
- 25 2. Visual, physical, mental, or emotional-behavioral disabilities;
- 26 3. Environmental, cultural, or economic differences; or
- 27 4. Limited English proficiency;

- 1 (g) "Emotional-behavioral disability" means a condition characterized by
2 behavioral excess or deficit which significantly interferes with a pupil's
3 interpersonal relationships or learning process to the extent that it adversely
4 affects educational performance so that specially designed instruction is
5 required in order for the pupil to benefit from education;
- 6 (h) "Multiple disability" means a combination of two (2) or more disabilities
7 resulting in significant learning, developmental, or behavioral and emotional
8 problems, which adversely affects educational performance and, therefore,
9 requires specially designed instruction in order for the pupil to benefit from
10 education. A pupil is not considered to have a multiple disability if the adverse
11 effect on educational performance is solely the result of deaf-blindness or the
12 result of speech or language disability and one (1) other disabling condition;
- 13 (i) "Deaf-blind" means auditory and visual impairments, the combination of
14 which creates such severe communication and other developmental and
15 learning needs that the pupil cannot be appropriately educated in special
16 education programs designed solely for pupils with hearing impairments,
17 visual impairments, or severe disabilities, unless supplementary assistance is
18 provided to address educational needs resulting from the two (2) disabilities;
- 19 (j) "Visually disabled" means a visual impairment, which, even with correction,
20 adversely affects educational performance to the extent that specially designed
21 instruction is required for the pupil to benefit from education. The term
22 includes both partially seeing and blind pupils;
- 23 (k) "Developmental delay" means a significant discrepancy between a child's
24 current level of performance in basic skills such as cognition, language or
25 communication, self-help, social-emotional, or fine or gross motor, and the
26 expected level of performance for that age. The term shall be used only with
27 children ages three (3) through eight (8);

1 (l) "Traumatic brain injury" means an acquired impairment to the neurological
2 system resulting from an insult to the brain which adversely affects
3 educational performance and causes temporary or permanent and partial or
4 complete loss of:

- 5 1. Cognitive functioning;
- 6 2. Physical ability; or
- 7 3. Communication or social-behavioral interaction.

8 The term does not include a brain injury that is congenital or degenerative, or
9 a brain injury induced by birth trauma;

10 (m) "Autism" means a developmental disability significantly affecting verbal and
11 nonverbal communication and social interaction, generally evident before age
12 three (3), that adversely affects educational performance. Characteristics of
13 autism include:

- 14 1. Engagement in repetitive activity and stereotyped movement;
- 15 2. Resistance to environmental change or change in daily routine; and
- 16 3. Unusual responses to sensory experience.

17 The term does not include children with characteristics of an emotional-
18 behavioral disability;~~and~~

19 (n) "Gifted and talented student" means a pupil identified as possessing
20 demonstrated or potential ability to perform at an exceptionally high level in
21 general intellectual aptitude, specific academic aptitude, creative or divergent
22 thinking, psychosocial or leadership skills, or in the visual or performing arts;
23 and

24 (o) "Twice exceptional student" means a gifted and talented student who is
25 identified as having a second exceptionality.

26 (2) "Special education" means specially designed instruction to meet the unique needs
27 of an exceptional child or youth.

1 (3) "Special educational facilities" means physical facilities designed or adapted to
2 meet the needs of exceptional children and youth, and approved according to
3 regulations promulgated by the Kentucky Board of Education.

4 (4) "Related services" means transportation and the developmental, corrective, and
5 other supportive services required to assist an exceptional child or youth to benefit
6 from special education, and may include, but are not limited to, speech-language
7 pathology and audiology services; psychological services; physical and occupational
8 therapy; recreation, including therapeutic recreation; early identification and
9 assessment of disabilities; counseling services, including rehabilitation counseling;
10 orientation and mobility services; medical services for diagnostic or evaluation
11 purposes; school health services; social work services in schools; and parent
12 counseling and training.

13 (5) "Transition services" means a coordinated set of activities for a pupil designed
14 within an outcome-oriented process, that promotes movement from school to
15 postschool activities. The term includes:

16 (a) Postsecondary education;

17 (b) Vocational training; and

18 (c) Integrated employment, including supported employment, continuing and
19 adult education, adult services, independent living, or community
20 participation.

21 The coordinated set of activities shall be based on the individual pupil's needs,
22 taking into account the pupil's preferences and interests, and shall include
23 instruction, community experience, the development of employment, and other
24 postschool adult living objectives, and, if appropriate, acquisition of daily living
25 skills and functional vocational evaluation.