

1 AN ACT relating to school personnel.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) No later than August 1, 2022, each local board of education or governing board*  
6 *of a public charter school shall adopt a written policy on information that the*  
7 *district provides about former certified and classified employees to other schools*  
8 *and school districts. The policy shall:*

9 *(a) Identify any employee who is permitted, by virtue of his or her job title, to*  
10 *respond to requests for information from potential employers;*

11 *(b) Identify the information the district or charter school would provide when*  
12 *responding to such a request, which shall include but is not limited to a*  
13 *requirement to disclose any allegation, known, supported by probable cause,*  
14 *or substantiated by the Cabinet for Health and Family Services, that the*  
15 *former employee engaged in unlawful sexual misconduct involving a minor*  
16 *or student, as required by the Every Student Succeeds Act, 20 U.S.C. sec.*  
17 *7926(a); and*

18 *(c) Require that notice of the disclosure requirements be provided to all current*  
19 *employees and to all potential employers who contact the school district,*  
20 *public school, or public charter school, regarding the possible employment*  
21 *of an individual seeking to obtain a job with the potential employer.*

22 *(2) In accordance with the Every Student Succeeds Act, 20 U.S.C. sec. 7926(b), an*  
23 *allegation of unlawful sexual misconduct involving a minor or student shall not*  
24 *be deemed to be known or supported by probable cause so as to require disclosure*  
25 *pursuant to a policy adopted in accordance with subsection (1) of this section if:*

26 *(a) The allegation has been properly reported to:*

27 *1. A law enforcement agency with jurisdiction over the alleged*

- 1                    misconduct; and
- 2                    2. Any other authorities as required by federal, state, or local law,
- 3                    including KRS 620.030 and Title IX of the Education Amendments of
- 4                    1972, 20 U.S.C. sec. 1681 et seq.; and
- 5                    (b) 1. The matter has been officially closed or the prosecutor or police with
- 6                    jurisdiction over the alleged misconduct has investigated the
- 7                    allegations and notified school officials that there is insufficient
- 8                    information to establish probable cause that the individual engaged in
- 9                    sexual misconduct regarding a minor or student in violation of the
- 10                   law;
- 11                   2. The individual has been charged with and acquitted or otherwise
- 12                   exonerated of the alleged misconduct; or
- 13                   3. The case or investigation remains open and there have been no
- 14                   charges filed against, or indictment of, the individual within four (4)
- 15                   years of the date on which the information was reported to a law
- 16                   enforcement agency.
- 17                   (3) When responding to requests for information regarding a former employee, an
- 18                   employee who complies with the school district policy adopted pursuant to
- 19                   subsection (1) of this section, is authorized to do so, and acts in good faith and
- 20                   without malice shall be immune against any civil action for damages brought by
- 21                   the former employee arising out of the disclosure of any information identified in
- 22                   the district policy adopted pursuant to subsection (1) of this section.
- 23                   (4) Subject to subsection (2) of this section and notwithstanding subsection (3) of this
- 24                   section, if school district, public school, or public charter school has received an
- 25                   allegation of sexual misconduct involving a minor or student against a former
- 26                   employee and, as a result of the allegation or substantiation of the allegation by
- 27                   the Cabinet for Health and Family Services, dismisses the employee or allows the

1 employee to resign in lieu of being fired and fails to disclose the allegation of  
 2 sexual misconduct when furnishing a reference for the former employee for a  
 3 position within a school or school district or responding to a request for  
 4 information regarding the former employee from a school and school district that  
 5 is a potential employer of the former employee, the school district, public school,  
 6 or public charter school shall, notwithstanding any claim for civil immunity on  
 7 behalf of the former employer:

8 (a) Be directly liable for damages to any student of the subsequent employing  
 9 school district or school who is found by a court of competent jurisdiction to  
 10 be a victim of the former employee's sexual misconduct; and

11 (b) Bear third-party liability to a subsequent employer that is a Kentucky school  
 12 district or public charter school for any legal liability, legal fees, costs, and  
 13 expenses incurred by the employing school district or school caused by the  
 14 failure to disclose the information.

15 (5) Nothing in this section or a school district or public charter school policy adopted  
 16 pursuant to subsection (1) of this section shall be interpreted to impair or  
 17 eliminate any duty to report set forth in KRS 620.030.

18 ➔Section 2. KRS 160.380 is amended to read as follows:

19 (1) As used in this section:

20 (a) "Administrative finding of child abuse or neglect" means a substantiated  
 21 finding of child abuse or neglect issued by the Cabinet for Health and Family  
 22 Services that is:

- 23 1. Not appealed through an administrative hearing conducted in accordance  
 24 with KRS Chapter 13B;
- 25 2. Upheld at an administrative hearing conducted in accordance with KRS  
 26 Chapter 13B and not appealed to a Circuit Court; or
- 27 3. Upheld by a Circuit Court in an appeal of the results of an administrative

1 hearing conducted in accordance with KRS Chapter 13B;

2 (b) "Alternative education program" means a program that exists to meet the  
3 needs of students that cannot be addressed in a traditional classroom setting  
4 but through the assignment of students to alternative classrooms, centers, or  
5 campuses that are designed to remediate academic performance, improve  
6 behavior, or provide an enhanced learning experience. Alternative education  
7 programs do not include career or technical centers or departments;

8 (c) "Clear CA/N check" means a letter from the Cabinet for Health and Family  
9 Services indicating that there are no administrative findings of child abuse or  
10 neglect relating to a specific individual;

11 (d) "Relative" means father, mother, brother, sister, husband, wife, son and  
12 daughter; and

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

22 (2) Except as provided in KRS 160.346, the school district personnel actions identified  
23 in this section shall be carried out as follows:

24 (a) All appointments, promotions, and transfers of principals, supervisors,  
25 teachers, and other public school employees shall be made only by the  
26 superintendent of schools, who shall notify the board of the action taken. All  
27 employees of the local district shall have the qualifications prescribed by law

1 and by the administrative regulations of the Kentucky Board of Education and  
2 of the employing board. Supervisors, principals, teachers, and other  
3 employees may be appointed by the superintendent for any school year at any  
4 time after February 1 preceding the beginning of the school year. No  
5 superintendent of schools shall appoint or transfer himself or herself to  
6 another position within the school district;

7 (b) When a vacancy occurs in a local school district, the superintendent shall  
8 notify the chief state school officer fifteen (15) days before the position shall  
9 be filled. The chief state school officer shall keep a registry of local district  
10 vacancies which shall be made available to the public. The local school  
11 district shall post position openings in the local board office for public  
12 viewing;

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

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

26 (3) Restrictions on employment of relatives shall be as follows:

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

11 (b) No superintendent shall employ a relative of a school board member of the  
12 district;

13 (c) No principal's relative shall be employed in the principal's school; and

14 (d) A relative that is ineligible for employment under paragraph (a), (b), or (c) of  
15 this subsection may be employed as a substitute for a certified or classified  
16 employee if the relative is not:

- 17 1. A regular full-time or part-time employee of the district;
- 18 2. Accruing continuing contract status or any other right to continuous  
19 employment;
- 20 3. Receiving fringe benefits other than those provided other substitutes or
- 21 4. Receiving preference in employment or assignment over other  
22 substitutes.

23 (4) No superintendent shall assign a certified or classified staff person to an alternative  
24 education program as part of any disciplinary action taken pursuant to KRS 161.011  
25 or 161.790 as part of a corrective action plan established pursuant to the local  
26 district evaluation plan.

27 (5) (a) No superintendent shall initially employ in any position in the district any

1 person who is a violent offender or has been convicted of a sex crime as  
 2 defined by KRS 17.165 which is classified as a felony or persons with an  
 3 administrative finding of child abuse or neglect in records maintained by the  
 4 Cabinet for Health and Family Services. The superintendent may employ, at  
 5 his discretion, except at a Kentucky Educational Collaborative for State  
 6 Agency Children program, persons convicted of sex crimes classified as a  
 7 misdemeanor.

8 **(b) Notwithstanding any other law to the contrary, a superintendent shall**  
 9 **immediately terminate any classified or certified employee who is convicted**  
 10 **of criminal offense against a victim who is a minor as defined in KRS**  
 11 **17.500.**

12 (6) Requirements for background checks shall be as follows:

13 (a) A superintendent shall require the following individuals to submit to a  
 14 national and state criminal background check by the Department of Kentucky  
 15 State Police and the Federal Bureau of Investigation and have a clear CA/N  
 16 check, provided by the individual:

- 17 1. Each new certified or classified hire;
- 18 2. A nonfaculty coach or nonfaculty assistant as defined under KRS  
 19 161.185;
- 20 3. A student teacher;
- 21 4. A school-based decision making council parent member; and
- 22 5. Any adult who is permitted access to school grounds on a regularly  
 23 scheduled and continuing basis pursuant to a written agreement for the  
 24 purpose of providing services directly to a student or students as part of  
 25 a school-sponsored program or activity;

26 (b) 1. The requirements of paragraph (a) of this subsection shall not apply to:  
 27 a. Classified and certified individuals employed by the school district

- 1 prior to June 27, 2019; or
- 2 b. Certified individuals who were employed in another certified
- 3 position in a Kentucky school district within six (6) months of the
- 4 date of hire and who had previously submitted to a national and
- 5 state criminal background check and who have a clear CA/N check
- 6 for the previous employment.
- 7 2. The Education Professional Standards Board may promulgate
- 8 administrative regulations to impose additional qualifications to meet
- 9 the requirements of Public Law 92-544;
- 10 (c) A parent member may serve prior to the receipt of the criminal history
- 11 background check and CA/N letter required by paragraph (a) of this
- 12 subsection but shall be removed from the council on receipt by the school
- 13 district of a report documenting a record of abuse or neglect, or a sex crime or
- 14 criminal offense against a victim who is a minor as defined in KRS 17.500, or
- 15 as a violent offender as defined in KRS 17.165, and no further procedures
- 16 shall be required; ~~and~~
- 17 (d) A superintendent may require a volunteer or a visitor to submit to a national
- 18 and state criminal history background check by the Department of Kentucky
- 19 State Police and the Federal Bureau of Investigation and have a clear CA/N
- 20 check, provided by the individual; and
- 21 (e) Before offering employment to any person who is known to have been
- 22 employed by a public school district or public charter school in the
- 23 Commonwealth of Kentucky, a superintendent or a designee of the
- 24 superintendent shall contact the previous employer to submit a request for
- 25 information in accordance with the policy adopted by that school district or
- 26 public charter school pursuant to subsection (1) of Section 1 of this Act.
- 27 (7) (a) If a certified or classified position remains unfilled after July 31 or if a



1           vacancy occurs during a school term, a superintendent may employ an  
2           individual, who will have supervisory or disciplinary authority over minors,  
3           on probationary status pending receipt of the criminal history background  
4           check and a clear CA/N check, provided by the individual. Application for the  
5           criminal record and a request for a clear CA/N check of a probationary  
6           employee shall be made no later than the date probationary employment  
7           begins.

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

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

21          (8) The provisions of KRS 161.790 shall apply to terminate employment of a certified  
22          employee on the basis of a criminal record other than a record of a sex crime or as a  
23          violent offender as defined in KRS 17.165, or on the basis of a CA/N check  
24          showing an administrative finding of child abuse or neglect.

25          (9) (a) All fingerprints requested under this section shall be on an applicant  
26          fingerprint card provided by the Department of Kentucky State Police. The  
27          fingerprint cards shall be forwarded to the Federal Bureau of Investigation

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

8 (b) Each application form, provided by the employer to an applicant for a certified  
9 or classified position, shall conspicuously state the following: "FOR THIS  
10 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND  
11 STATE CRIMINAL HISTORY BACKGROUND CHECK AND A LETTER,  
12 PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH  
13 AND FAMILY SERVICES STATING THE APPLICANT HAS NO  
14 ADMINISTRATIVE FINDINGS OF CHILD ABUSE OR NEGLECT  
15 FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND  
16 NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH  
17 AND FAMILY SERVICES."

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

22 (10) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary,  
23 when an employee of the school district is charged with any offense which is  
24 classified as a felony, the superintendent may transfer the employee to a second  
25 position until such time as the employee is found not guilty, the charges are  
26 dismissed, the employee is terminated, or the superintendent determines that further  
27 personnel action is not required. The employee shall continue to be paid at the same

1 rate of pay he or she received prior to the transfer. If an employee is charged with an  
2 offense outside of the Commonwealth, this provision may also be applied if the  
3 charge would have been treated as a felony if committed within the Commonwealth.  
4 Transfers shall be made to prevent disruption of the educational process and district  
5 operations and in the interest of students and staff and shall not be construed as  
6 evidence of misconduct.

7 (11) Notwithstanding any law to the contrary, each certified and classified employee of  
8 the school district shall notify the superintendent if he or she

9 (a) Has been found by the Cabinet for Health and Family Services to have abused  
10 or neglected a child, and if he or she has waived the right to appeal a  
11 substantiated finding of child abuse or neglect or if the substantiated incident  
12 was upheld upon appeal; and

13 (b) *Has been convicted of a criminal offense against a victim who is a minor as*  
14 *defined in KRS 17.500.*

15 Any failure to report this finding shall result in the certified or classified employee  
16 being subject to dismissal or termination.

17 (12) The form for requesting a CA/N check shall be made available on the Cabinet for  
18 Health and Family Services Web site.