

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM  
2023 REGULAR SESSION  
**Unofficial Document**

Amend printed copy of **SB 5/GA**

From page 1, line 3, through page 4, line 11, delete Sections 1 and 2 in their entirety and insert the following in lieu thereof:

"➔SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 9 of this Act:

- (1) "Biological sex" means the physical condition of being male or female, as determined by a person's sex chromosomes, and formally recognized on the person's original birth certificate or the child's school enrollment documentation;
- (2) "Child" means a person who has not reached the age of eighteen (18);
- (3) "External health care provider" means a provider of health or mental health services that is not employed by or contracted with the school district to provide services to the district's students;
- (4) "Health services" has the same meaning as in KRS 156.502;
- (5) "Mental health services" means services provided by a school-based mental health services provider as defined in KRS 158.4416;
- (4) "Parent" means any biological, foster, or adoptive parent, de facto custodian as defined in KRS 403.270, legal guardian who has legal custody of a child, or any adult caregiver authorized to make school-related decisions for a child under KRS 158.144, whose

Amendment No. HFA 2

Rep. Rep. Josh Calloway

Committee Amendment \_\_\_\_\_

Signed: \_\_\_\_\_

Floor Amendment \_\_\_\_\_

LRD Drafter: \_\_\_\_\_

Adopted: \_\_\_\_\_

Date: \_\_\_\_\_

Rejected: \_\_\_\_\_

Doc. ID: XXXX

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custody of the child has not been suspended or terminated by a court order;

(5) "Public school" means any school district or public charter school organization, any public school operated by those entities, the governing boards of those entities, and the employees, agents, and officers of those entities; and

(6) "School enrollment documentation" means either:

(a) A certified copy of the child's birth certificate; or

(b) Other reliable proof of the child's identity, age, and biological sex consistent with the processes of KRS 156.070(2)(g)2, and an affidavit of the parent's willingness but inability to produce a copy of the birth certificate as provided upon enrollment of the child for the first time in any primary or secondary school to fulfill the requirements of KRS 158.032.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) As it relates to public education, the General Assembly hereby finds and declares that:

(a) A parent of a child shall have the fundamental right and liberty to make decisions concerning the child's care, custody, and control without obstruction or interference from the government. As it relates to public schools, this shall include the:

1. Right to make decisions concerning the child's education, including the right to cause the child to be educated in any manner that meets the compulsory attendance requirements and exemptions established in KRS 159.010 and 159.030 and in any other manner established by statute or the Constitution of the Commonwealth of Kentucky; and
2. High duty and right to nurture and direct their children's destiny, including their upbringing and education; mental, emotional, and physical health care;

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and moral and religious development;

(b) The rights recognized and the protections established in Sections 1 to 9 of this Act as they are related to public school are rooted in the right to due process of law guaranteed pursuant to the Constitution of the United States;

(c) The interests and role of parents in the care, custody, and control of their children are implicit in the concept of ordered liberty, deeply embedded in our nation's history and tradition, and among the unalienable rights retained by the people under the Ninth Amendment to the Constitution of the United States;

(d) A parent of a child in this Commonwealth has inalienable rights that are more comprehensive than those listed in Sections 1 to 9 of this Act, unless such rights have been lawfully waived or terminated; and

(e) The Commonwealth has independent authority to protect the parental rights of its citizens.

(2) The public schools of the Commonwealth shall not violate a parent's fundamental rights identified in Sections 1 to 9 of this Act. Any restriction of or interference with these rights shall not be upheld unless it is demonstrated by clear and convincing evidence to be:

(a) Essential to further a compelling governmental interest; and

(b) The least restrictive means available for the furthering of that compelling governmental interest.

(3) To guard the rights established in Sections 1 to 9 of this Act, no later than August 1, 2023, or upon the board's creation, each local board of education and charter school board of directors shall establish a process to receive complaints regarding violations of those rights that includes:

(a) For each school designating an employee to receive complaints and coordinate the

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- process of assessing and resolving complaints:
- (b) The procedure for submission of the complaint that outlines the minimum information necessary to process and assess a complaint;
  - (c) Written confirmation to the parent that the complaint has been received within five (5) business days of receipt of the complaint that includes any deficiencies that must be remedied so that the complaint may be processed and assessed;
  - (d) A preliminary written response to the complaint within thirty (30) calendar days of receipt of the complaint, unless another schedule is mutually agreed to by the parent and the school, that outlines reasonable steps that have been or will be taken to investigate the complaint and how the school plans to resolve the complaint or the specific reasons for not resolving the complaint;
  - (e) A final written determination of the merits of the complaint and the actions taken, if any, by the school to resolve the complaint within sixty (60) days following the receipt of the complaint or the basis for taking no action; and
  - (f) An appeal process of the determination in paragraph (e) of this subsection that:
    - 1. Is subject to full administrative and substantive review by the school's governing board and shall not be delegated;
    - 2. Includes an opportunity for the parent to provide input during public comment at a local governing board meeting prior to the appeal being voted upon;
    - 3. Has a review of facts and processes completed within thirty (30) calendar days of receiving the written appeal, unless another time frame is mutually agreed upon by the parent and the governing board of the school; and
    - 4. Is discussed and voted on during a meeting of the governing board of the school within seventy-five (75) calendar days of receiving the written appeal,

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unless another time frame is mutually agreed upon by the parent and the board, subject to the open records and open meeting requirements under KRS Chapter 61.

(4) Nothing in Sections 1 to 9 of this Act shall be construed:

(a) To prescribe all rights held by the parent of a child in this state; or

(b) As altering the established presumption in favor of the constitutionality of statutes and regulations.

(5) Any portion or section of Sections 1 to 9 of this Act declared invalid shall not affect the validity of the remaining portions or sections of Sections 1 to 9 of this Act.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) In accordance with Section 2 of this Act, a parent shall have the following rights as they relate to the parent's child and a public school:

(a) To access and review:

1. All education records relating to his or her minor child as provided in KRS 160.700 to 160.730;
2. Any record associated with the selection or approval of any guest lecturer, guest instructor, or outside presenter who participates in the child's education;
3. Any records in the possession of the school relating to third-party individuals and organizations contracted with the school that the child attends;
4. Any student well-being questionnaire or health screening form used for research purposes;
5. Any curricular documents, books, and other educational materials used in the child's education that may be in physical or digital format and of which the

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parent may make copies; and

6. All information identified in this section without entering into a nondisclosure agreement;

(b) To provide consent prior to:

1. A well-being questionnaire or health screening form used for research purposes being given to the child. A school shall not require a grant of general consent to these questionnaires or forms by a parent, but shall request consent specific to each questionnaire or form to be provided to the child;

2. A biometric scan of the child is made, shared, or stored by a school;

3. Any record of the child's blood or deoxyribonucleic acid is created, stored, or shared by a school, except as required by law and authorized pursuant to a court order;

4. A field trip, or similar event, occurring in which the child will be required to leave the property owned, leased, or operated by the school; and

5. Each video or voice recording of the child is made by a school unless it is made during or as part of a court-ordered proceeding or a forensic interview in a criminal investigation or is to be used primarily for the following purposes:

a. Documentation of regular classroom instruction, such as participation in journalism;

b. Security or surveillance of buildings, grounds, or transportation vehicles; or

c. Documentation of an extracurricular activity or public event where recording is common practice;

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- (c) To know the people to whom and material to which the child is exposed while on property owned, leased, or operated by the school;
- (d) To know the nature and purpose of clubs and extracurricular activities that have been approved by the school or district;
- (e) To know the identity of the people and entities, including but not limited to organizations, agencies, third-party clearinghouses, and consultants, that have accessed the child's education records, whether authorized by the school or not;
- (f) To receive, without request, any course syllabus or course reading list prior to the child's beginning of the coursework or upon the child's enrollment in the course
- (g) To visit his or her child at school during school hours unless the visit would disrupt the educational process of other children;
- (h) To be provided a consent form prior to, and give written prior consent:

  1. To changes in each specific nonemergency health care service provided by the school to the child;
  2. To each specific nonemergency mental health service provided by the school to the child;
  3. To any time that school personnel make a referral for the student to receive a school's health services or mental health services or a referral to an external health care provider;
  4. That is not a grant of general consent but is specific to each service provided to the child;
  5. That shall not waive the parent's right to access the child's education or health records or the right to receive notifications required by this section;  
and
  6. That, if not obtained from the parent, shall prohibit the school from providing

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that service;

(i) To be notified:

1. Upon a student's enrollment and at the beginning of each school year, a listing each of the health services and mental health services available at the student's school and of the parents' right to withhold consent or decline any specific service;
2. Of major changes in his or her child's mental, emotional, and physical health and well-being, including but not limited to:
  - a. Significant changes to the child's gender expression;
  - b. Any request to be referred to by a name, pronoun, or other identifier inconsistent with the school enrollment documentation submitted in accordance to KRS 158.032;
  - c. Indicators of eating disorders;
  - d. Indicators of chemical dependency;
  - e. Evidence of pregnancy, whether the result of consensual or nonconsensual sexual activity;
  - f. Evidence of self-harm; and
  - g. Evidence of suicidal or abnormally violent ideation or intention;
3. At the beginning of the school year and upon a change of status, whether the child's school campus is assigned a school resource officer or not;
4. Within one (1) business day of the school attaining knowledge, of the occurrence of the following incidents on the campus of the school the child attends:
  - a. Physical assault;
  - b. Sexual assault;

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- c. Unlawful possession of a weapon on school property;
  - d. Unlawful drug use or possession;
  - e. Police investigations, unless no report is requested by police;
  - f. Notice to the parent of the parent's child being involved in a bullying incident, as defined in Section 8 of this Act; and
  - g. Regardless of the incident's location, serious crimes such as capital offenses, felonies, or Class A misdemeanors, of which a teacher or other school employee who works at the child's school campus is charged or convicted; and
5. Prior to the day of presentation, notification to parents of the identity of nonemployee speakers, instructors, or demonstrators and the purpose of the nonemployee's participation in the child's class or program;
- (j) To request and receive, without charge, one (1) copy of all information identified in this subsection related to the child; and
  - (k) The rights outlined in the Sections 1 to 9 of this Act.
- (2) To guard the rights outlined in Sections 1 to 9 of this Act, no later than August 1, 2023, or upon the board's creation, each local board of education or charter school board of directors shall take necessary actions and shall adopt policies and procedures to:
- (a) Notify the parents of each enrolled child at the beginning of the school year or upon enrollment of the parental rights outlined in Sections 1 to 9 of this Act;
  - (b) Ensure that no information relating to a child that requires prior consent under Sections 1 to 9 of this Act is created, collected, stored, or shared without the prior consent of the parent;
  - (c) Ensure that no service or activity relating to a child that requires prior consent under Sections 1 to 9 of this Act is conducted without the prior consent of the

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- parent;**
- (d) Provide prompt notification without solicitation, request, or inquiry from a parent as required by Sections 1 to 9 of this Act;**
  - (e) Provide the opportunity to access, review, and receive in digital form, without charge, any requested information involving a parent's minor child as permitted by Sections 1 to 9 of this Act, upon the written request of the parent, within five (5) business days of the receipt of the request;**
  - (f) Notify parents of major changes in their child's mental, emotional, and physical health and well-being, including but not limited to those listed in subsection (1)(i) of this section, and encourage students to discuss mental, emotional, or physical well-being or other life issues with their parents;**
  - (g) Prohibit any teacher or other school employee from withholding any information concerning a child's academic record or mental, emotional, or physical well-being, including but not limited to those referenced in subsection (1)(j) of this section, confidential from the child's parent;**
  - (h) Prohibit any teacher or other school employee from coercing or discouraging a child from sharing any information concerning the child's academic record or mental, emotional, or physical well-being with his or her parent, including but not limited to those listed in subsection (1)(j) of this section;**
  - (i) Prohibit the funding of any professional development activity, consultant services, trainings, or incentives, or the adoption of any policies, practices, or procedures, that:**
    - 1. Advise, compel, or incentivize any teacher, school employee, or presenter to use pronouns that are inconsistent with the information on the child's school enrollment documentation;**

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2. Discourage, punish, or disadvantage a teacher, school employee, or presenter in any way for refusal or failure to use a name or other identifier in reference to a child that is inconsistent with the child's information listed on the school enrollment documentation;
  3. Assert that possessing any set of immutable characteristics makes a person in any way responsible for, or a contributor to, the suffering or adverse conditions experienced by another group of people; or
  4. Advise, compel, or incentivize any persons to:
    - a. Segregate or form affinity groups according to any protected class;
    - b. Engage in any activity meant to separate persons based upon any immutable characteristic with the intent or effect of ascribing disadvantage, advantage, inferiority, or superiority; or
    - c. Assert that a person, simply by virtue of any immutable characteristic, is inherently more valuable than another person or better qualified to understand or empathize with persons with that characteristic; and
- (j) 1. Prohibit the imposition of any requirement on any child as a condition for school admittance or attendance, employment, participation in or attendance at extra-curricular activities, or access or use of property located in the Commonwealth of Kentucky, whether owned, leased, or operated by the institution, to:
- a. Force the use of any type of medical device, including but not limited to any type of facial coverings; or
  - b. Submit to any type of medical procedure or treatment, including but not limited to any type of vaccination or testing unless otherwise directed by a court of competent jurisdiction.

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**2. Nothing in this paragraph shall:**

- a. Contradict the requirements of KRS 158.035 regarding certificates of immunization;**
- b. Apply to nonmedical safety equipment used as a precaution to avoid bodily injuries in athletic activities, physical education instruction, extracurricular activities, classroom instruction, or demonstrations involving dangerous materials or activities;**
- c. Apply to a physical or fitness examination required to participate or resume participation in any interscholastic athletic activity; or**
- d. Invalidate requirements, including those of students that have curricular or work responsibilities, necessary for student presence in a medical setting.**

**(3) Nothing in this section shall:**

- (a) Prohibit a school or the school's personnel from seeking or providing emergency medical services for a student as outlined in the school's policies;**
- (b) Remove the duty to report pursuant to KRS 620.030 if school personnel has reasonable cause to believe the child is a dependent child or an abused or neglected child due to the risk of physical or emotional injury identified in KRS 600.020(1)(a)2. or as otherwise provided in that statute; or**
- (c) Require school personnel to engage in any action otherwise prohibited by state or federal law.**

**(4) No later than July 1, 2024, the Kentucky Department of Education and the Kentucky Board of Education shall:**

- (a) Eliminate any administrative regulations or recommended practices or procedures that are inconsistent with Sections 1 to 9 of this Act; and**

(b) Develop and recommend best practices to facilitate compliance by schools with Sections 1 to 9 of this Act.

(5) A school shall not be required to adopt or comply with the recommended best practices developed under subsection (4)(b) of this section, so long as the school complies with Sections 1 to 9 of this Act.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section, "community standard state of dress" means the condition of being fully clothed, or partially or fully unclothed in which the bodily coverage by fully opaque clothing is appropriate as determined by the average adult citizen of the Commonwealth applying contemporary community standards of what is appropriate dress, given:

(a) The age, biological sex, and other demographic factors of the unclothed person;

(b) The age, biological sex, familial relation, and other demographic factors of persons able to view the person within the situational context; and

(c) The conditions of expectation of privacy within the situational context.

(2) As it relates to public schools, the General Assembly hereby finds and declares that:

(a) Children have natural and normal concerns about bodily privacy while partially or completely unclothed, and most children prefer that members of the opposite biological sex not be present in those circumstances;

(b) A parent has the right, when entrusting the supervision of his or her child to a school, to not have:

1. His or her child permitted to view persons of the opposite sex outside of the community standard state of dress;

2. Persons of the opposite sex permitted to view his or her child outside of the

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community standard state of dress; and

3. Persons of the opposite sex in the presence of his or her child where there is a reasonable expectation of bodily privacy;

(c) Allowing students to share private quarters, restrooms, locker rooms, or shower rooms where there is a reasonable expectation of bodily privacy, which are reserved for students of a different biological sex, creates:

1. A significant potential for disruption of school activities and unsafe conditions; and

2. Potential for a justifiable sense of immodesty, indignity, or insecurity; and

(d) Providing children who object to the use of private quarters, restrooms, locker rooms, or shower rooms designated for the child's biological sex with reasonable alternative facility accommodations, if and when available, avoids potential complications and serves to protect their dignity and safety.

(3) To safeguard the rights recognized in subsection (2) of this section:

(a) Every school shall respect and protect the bodily privacy of children and shall not compel or permit a student to be outside a community standard state of dress in the presence, or within view of, members of the opposite biological sex;

(b) In the private areas identified in subsection (2) of this section where there is a reasonable expectation of bodily privacy, school personnel shall provide areas designated for access by students separated by their biological sex; and

(c) A student who informs school officials that he or she intends not to use the private areas provided for his or her access by paragraph (b) of this subsection and whose parent provides written consent to the school shall be provided with reasonable alternative facility accommodations, if available. Reasonable facility accommodations:

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1. May include but are not limited to access to single-stall restrooms or the controlled access to faculty bathrooms, locker rooms, or shower rooms; and
  2. Shall not include the access to school restrooms, locker rooms, or shower rooms designated for access by persons of the opposite biological sex, or the use of private quarters with members of the opposite biological sex who are not family members of the student.
- (4) While accessing private quarters, restrooms, locker rooms, or shower rooms designated for access by the child's biological sex where there is a reasonable expectation of bodily privacy, a child who encounters a person of the opposite biological sex shall have a private cause of action against the school if school personnel:
- (a) Authorized the encountered person to access the facilities of the opposite biological sex in the same manner as the child; or
  - (b) Failed to take reasonable steps to prevent the encountered person from accessing facilities of the opposite biological sex in the same manner as the child.
- (5) Any student, teacher, or employee required by the school or school personnel to share private quarters where there is a reasonable expectation of bodily privacy with a member of the opposite biological sex shall have a cause of action against the school, unless the person sharing the quarters is a family member of the student, teacher, or employee, as applicable.
- (6) Nothing in this section shall apply to the following persons:
- (a) A child younger than six (6) years of age or a person with an established need of caregiver assistance to use a facility, who may be present in the facilities designated for use by the opposite biological sex of the child if accompanied by the person's caregiver of designated biological sex;
  - (b) A person engaged in sanctioned inspection, maintenance, janitorial, or custodial

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activities if reasonable precautions are made to prevent being in the presence of, or viewing, a person of the opposite sex;

(c) A medical professional engaging in the practices of the profession under the accepted standard of care;

(d) A person rendering medical or other emergency services; or

(e) A person serving in a law enforcement or school safety capacity, including but not limited to pursuing a fleeing criminal suspect, executing a duly issued warrant, or conducting a school authorized activity.

➔ SECTION 5. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) For the purposes of this section, "controversial subject matter" means an issue that is a point made in the electoral platform of a political party as defined in KRS 118.015 and is contested by the electoral platform of another political party at the local, state, or federal level.

(2) The General Assembly hereby finds and declares that:

(a) The common school environment and interactions between teachers and students in kindergarten through grade twelve (12) are primarily intended to facilitate the learning of approved curricula and development of approved sets of skills; and

(b) The common school environment is not an appropriate place to engage in teacher-led or teacher-promoted social or political advocacy with respect to controversial subject matters.

(3) A parent has a right to have his or her child spend time in public school primarily learning approved curricula and developing approved sets of skills with no time spent being indoctrinated into any partisan political position or being involved in teacher-led or teacher-promoted social or political advocacy with respect to controversial subject

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matter.

(4) In the public school setting or while serving in the scope of duties of temporary, part-time, or full-time employment at a public school, a teacher, school employee, guest lecturer, guest instructor, or outside presenter shall not:

(a) Discuss with or provide instruction to any student in kindergarten through grade eight (8) on the topics of sexual orientation, sexual preference, or gender expression inconsistent with biological sex;

(b) Discuss with or provide instruction to any student in grades nine (9) through twelve (12) the topics of sexual orientation, sexual preference, or gender expression inconsistent with biological sex, unless required for instruction of the school's approved curriculum for the course being taught;

(c) Discuss the person's own sexual orientation, sexual preference, or gender expression that is inconsistent with his or her biological sex with any student;

(d) Endorse, support, or oppose any candidate or nominee for public office or any elected or appointed official of the local, state, or federal government;

(e) Endorse, support, or oppose any pending, proposed, or enacted legislation or regulation at the local, state, or federal level in the presence of students;

(f) Endorse, support, or oppose any pending, proposed, or decided court case or judicial action at the local, state, or federal level in the presence of students;

(g) Endorse, support, or oppose any pending, proposed, or executed executive action at the local, state, or federal level in the presence of students;

(h) Segregate students or form affinity groups of students according to any protected class or engage in any discussion or activity meant to segregate or separate one (1) or more students based upon any immutable characteristic with the intent or effect of ascribing advantage, disadvantage, superiority, inferiority, or responsibility,

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- individually or collectively, for the past, present, or future condition of any other individual or group of people; or
- (i) Encourage or coerce, or attempt to encourage or coerce, a child to withhold any information about material or instruction presented to, or conversation held with, the child from his or her parent.
- (6) Notwithstanding the prohibitions on conduct in this section, a teacher, school employee, guest lecturer, guest instructor, outside presenter, or student shall not be compelled to endorse, affirm, support, oppose, or advocate for or against anything in opposition to his or her sincerely held beliefs and convictions, religious or otherwise, including but not limited to:
- (a) Political candidates, parties, platforms, issues, judicial judgments, legislation, regulation, executive order, or policies;
- (b) Any position on a controversial subject matter;
- (c) Any position on a religious belief, dogma, doctrine, or practice;
- (d) Any perspective on sexual orientation, sexual preference, or gender expression; or
- (e) The use of pronouns or other identifiers to refer to a person that are inconsistent with the person's biological sex.
- (7) In support of the rights outlined in this section, each local board of education or charter school board of directors shall adopt policies and procedures to ensure that:
- (a) No funds are expended for any professional development, trainings, or incentives that instruct, advise, reward, or compel any teacher, school employee, or presenter to take a particular position on, or advocate for or against, anything listed in subsection (5) or (6) of this section;
- (b) No professional advantage, disadvantage, incentive, disincentive, promotion, demotion, reward, or penalty of any type is conferred or contingent upon a teacher,

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- school employee, or presenter's willingness, refusal, or failure to take a particular position on, or advocate for or against, anything listed in subsection (5) or (6) of this section;*
- (c) All teachers, school employees, guest lecturers, guest instructors, and outside presenters at a school are aware of the prohibitions of this section and the penalties for willful violation;*
- (d) All teachers, school employees, guest lecturers, guest instructors, and outside presenters at a school comply with the prohibitions of this section and that repeated willful violations are subject to dismissal;*
- (e) Take reasonable precautions to make inaccessible to any minor, on any property owned, leased, or operated by the public school, any pervasively vulgar, obscene or harmful to minors matter as defined in Section 7 of this Act, or obscene imagery representing minors; and*
- (f) No slogans, emblems, phrases, flags, or symbols that are associated with any sexual orientation, sexual preference, gender expression, or associated with any controversial subject matter are displayed on school property by school personnel.*
- (8) Nothing in this section shall prevent or limit:*
- (a) A school employee from conversationally referencing his or her own legal spouse;*
- or*
- (b) The requirement to address in an impartial and factual way topics that are permissible under statute and approved by standard school district or public charter school policies.*

➔Section 6. KRS 158.1415 is amended to read as follows:

- (1)* If a school council or, if none exists, the principal adopts a curriculum for human sexuality or sexually transmitted diseases, instruction shall include but not be limited to the

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following content:

- ~~(a)(1)~~ Abstinance from sexual activity is the desirable goal for all school-age children;
- ~~(b)(2)~~ Abstinance from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems; and
- ~~(c)(3)~~ The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship.

**(2) Any course, curriculum, or program offered by a public school on the subject of human sexuality provided by school personnel or by third parties authorized by the school shall:**

**(a) Require a parent of a student to provide prior consent to their student's participation in the course or curriculum and shall provide an alternative course or curriculum without any penalty to the student's grade or standing;**

**(b) Be subject to an inspection by parents of participating students that allows parents to review the following materials:**

- 1. Curriculum;**
- 2. Instructional materials;**
- 3. Lesson plans;**
- 4. Assessments or tests;**
- 5. Surveys or questionnaires;**
- 6. Assignments; and**
- 7. Instructional activities;**

**(c) Be developmentally appropriate; and**

**(d) Be limited to a curriculum that has been subject to the reasonable review and response by stakeholders in conformity with this subsection and KRS 160.345(2).**

**(3) A public school offering any course or curriculum on the subject of human sexuality shall provide written notification to the parents of a student at least two (2) weeks prior**

to the student's planned participation in the course or curriculum. The written notification shall:

(a) Inform the parents of the provisions of subsection (2) of this section;

(b) Provide the date the course or curriculum is scheduled to begin;

(c) Detail the process for a parent to review the materials outlined in subsection (2) of this section;

(d) Explain the process for a parent to decline the student's participation in the course or curriculum; and

(e) Provide the contact information for the teacher or instructor of the course or curriculum and a school administrator designated with oversight.

(4) Nothing in this section shall prohibit public school personnel from:

(a) Discussing human sexuality, including the sexuality of any historic person, group, or public figure, so long as the discussion is necessary context in relation to a topic of instruction from a curriculum approved pursuant to KRS 160.345; or

(b) Responding to a question from a student during class regarding human sexuality so long as it relates to a topic of instruction from a curriculum approved pursuant to KRS 160.345.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Harmful to minors" means that quality of any material, program, or event containing a description, depiction, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

1. Taken as a whole, would be found by the average person applying contemporary community standards to appeal predominantly to the prurient,

shameful, or morbid interest of minors;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
3. Taken as a whole, would be found by a reasonable person to lack serious literary, artistic, political, or scientific values for minors;

(b) "Matter" or "material" has the same meaning as in KRS 531.010;

(c) "Nudity" or "nude" means the:

1. Showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering;
2. Showing the adult or adolescent female breast with less than a fully opaque covering of any portion below the top of the areola;
3. Depiction of covered male genitals in a discernibly turgid state;

(d) "Obscene" or "obscenity" means the same as "obscene" in KRS 531.010;

(e) "Obscene imagery representing minors" means a visual depiction of any kind produced by any means, including but not limited to a drawing, cartoon, sculpture, or painting, that:

1. a. Depicts a minor engaging in sexual conduct; and  
b. Is obscene; or
2. a. Depicts an image that is or appears to be of a minor engaging in graphic bestiality, sadomasochistic abuse, or sexual intercourse; and  
b. Lacks serious literary, artistic, political, or scientific value; and

(f) "Sexual conduct" has the same meaning as in KRS 531.010.

(2) Notwithstanding existing criminal prohibitions in federal and state law against the distribution of material or the permitting access to an event or program to minors that is obscene, harmful to minors, or contains obscene imagery representing minors, no

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*matter, performance, program, or event shall be deemed to have educational value or to be educationally suitable for students in this Commonwealth that:*

- (a) Is obscene;*
- (b) Is harmful to minors;*
- (c) Contains obscene imagery representing minors; or*
- (d) Is pervasively vulgar.*

*(3) The Supreme Court of the United States has established that school boards and school administrators have significant latitude when determining educational suitability for even content made optionally available to students, including in school libraries, with even greater latitude to regulate content that is required, including in course curricula, so long as the intent is not to prescribe what shall be orthodox in politics, nationalism, religion, or matters of opinion, or to exercise that discretion in a narrowly partisan or political manner.*

*(4) Winning an award, prize, or other institutional recognition that considers any factor, including but not limited to the demographic characteristics or historical significance of the content's author, or the content's broader social impact, other than the purely literary, artistic, political, or scientific value of the content for educational purposes shall not factor into the assessment outlined in subsection (2) of this section.*

*(5) A parent has the right and reasonable expectation that his or her child will not be given access or exposed to any material, event, or program that is not educationally suitable while on school property or by any public school personnel in the execution of their duties.*

*(6) To safeguard the rights identified in subsection (5) of this section, each local board of education or charter school board of directors shall take necessary actions and adopt policies and procedures to:*

- (a) Take reasonable precautions to make inaccessible, on any property owned, leased, or operated by the public school, any material, program, or event that is not educationally suitable;
- (b) Prohibit on the site of on any property owned, leased, or operated by the public school, any material, program, or event that is not educationally suitable; and
- (c) Adopt a complaint resolution policy for its local schools, consistent with subsection (3) of Section 2 of this Act and subsections (7) to (11) of this section, with the school principal as the designated employee responsible to receive and assess complaints, to be used to address complaints submitted by parents alleging that any material, program, or event that is not educationally suitable for students has been provided or is currently available to the parent's child.
- (7) If the material, program, or event that is subject of the complaint in subsection (6)(c) is determined to be not educationally suitable for students, the school principal shall remove current and future student access to the subject of the complaint. Otherwise, the school principal, or school board in the event of appeal, shall determine whether student access to material, program, or event that is the subject of the complaint shall remain, be restricted, or be removed;
- (8) The school principal, or the school board in event of appeal, shall determine whether a program or event that is the subject of the complaint in subsection (6)(c) shall be eligible for future participation by students in the school;
- (9) In the event that the complaint process in subsection (6)(c) is carried through to appeal with the school board, within fifteen (15) business days from the date of a final disposition, the title of the material or a description of the program or event submitted for appeal, whether the material, program, or event was determined to be educationally suitable for students, whether student access to the material will remain, be restricted, or

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be removed or whether the program or event shall be eligible for future participation by students in the school, and the vote cast by each individual board members shall:

(a) Be published on the website of the board where it shall remain available for review;

and

(b) Be published in the newspaper with the largest circulation in the county.

(10) (a) A parent may request in writing to the school, after final disposition of the complaint submitted pursuant to subsection (6)(c) of this section, that the school ensure his or her student does not have access to the material or is not allowed to participate in the program or event that the parent believes to be not educationally suitable for students.

(b) The school shall ensure that the student whose parent has made a request as provided for in paragraph (a) of this subsection does not have access to the material or is not allowed to participate in the program or event that the parent believes to be not educationally suitable for students.

(11) Willful violation of this section by knowingly providing students with access to material, or a performance, event, or program that has been deemed or should reasonably be known to be not educationally suitable for students by an employee of a public school shall be a basis for disciplinary action.

➔Section 8. KRS 158.148 is amended to read as follows:

(1) A parent has a right and reasonable expectation that his or her child will not be bullied while at school, at school-sanctioned events, or on school-sponsored transportation. To safeguard this right, a school board shall establish policies and procedures in accordance with this section to ensure that if a child is involved in a bullying incident, the school will notify the parents of all circumstances involved and take actions to provide support for the victim and to prevent further bullying.

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- ~~(2)~~~~(1)~~ (a) As used in this section, "bullying" means any unwanted verbal, physical, or social behavior among students that involves a real or perceived power imbalance and is repeated or has the potential to be repeated:
1. That occurs on school premises, on school-sponsored transportation, or at a school-sponsored event; or
  2. That disrupts the education process.
- (b) This definition shall not be interpreted to prohibit civil exchange of opinions or debate or cultural practices protected under the state or federal Constitution where the opinion expressed does not otherwise materially or substantially disrupt the education process.
- ~~(3)~~~~(2)~~ In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of Professional Educators, the Kentucky Association of School Superintendents, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, and in collaboration with the Center for School Safety, the Department of Education shall develop or update as needed and distribute to all districts by August 31 of each even-numbered year, beginning August 31, 2008:
- (a) Statewide student discipline guidelines to ensure safe schools, including the definition of serious incident for the reporting purposes as identified in KRS 158.444;
  - (b) Recommendations designed to improve the learning environment and school climate, parental and community involvement in the schools, and student achievement; and
  - (c) A model policy to implement the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080.
- ~~(4)~~~~(3)~~ The department shall obtain statewide data on major discipline problems and reasons

why students drop out of school. In addition, the department, in collaboration with the Center for School Safety, shall identify successful strategies currently being used in programs in Kentucky and in other states and shall incorporate those strategies into the statewide guidelines and the recommendations under subsection ~~(3)~~(2) of this section.

~~(5)~~(4) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles and legal requirements to guide local districts in developing their own discipline code and school councils in the selection of discipline and classroom management techniques under KRS 158.154; and in the development of the district-wide safety plan.

~~(6)~~(5) (a) Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board. The code shall be updated no less frequently than every two (2) years, with the first update being completed by November 30, 2008.

(b) The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way communication system for teachers and other employees to notify a principal, supervisor, or other administrator of an existing emergency.

(c) The code shall prohibit bullying.

(d) The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.

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- (e) The code shall contain:
1. Procedures for identifying, documenting, and reporting incidents of bullying, incidents of violations of the code, and incidents for which reporting is required under KRS 158.156, **including but not limited to the appropriate order of reporting to staff and escalation to staff if the incidents persist;**
  2. Procedures for investigating and responding to a complaint or a report of bullying or a violation of the code, or of an incident for which reporting is required under KRS 158.156, **including but not limited to specific time requirements for beginning and completing an investigation;**
  3. **Procedures for the appeal and review of each incident, including but not limited to specific time requirements;**
  4. **Procedures for**~~including~~ reporting incidents to the parents, legal guardians, or other persons exercising custodial control or supervision of the students involved, **including the actions to be taken to prevent any possible future acts of bullying or retaliation;**
  5. **Procedures for providing support for the victim and assessing the need for protection of the victim;**
  - 6.~~3.~~ A strategy or method of protecting from retaliation a complainant or person reporting an incident of bullying, a violation of the code, or an incident for which reporting is required under KRS 158.156;
  - 7.~~4.~~ A process for informing students, parents, legal guardians, or other persons exercising custodial control or supervision, and school employees of the requirements of the code and the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080, including training for school employees; and
  - 8.~~5.~~ Information regarding the consequences of bullying and violating the code and

violations reportable under KRS 158.154, 158.156, or 158.444.

- (f) The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.
- (g) A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents, legal guardians, or other persons exercising custodial control or supervision shall be provided copies of the code.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) A parent has a right for his or her school-aged child not to be discriminated against on the basis of parental choice of school type, public or private, during selection to participate in extracurricular activities at the public school to which the child otherwise would be assigned according to district school board attendance policies, or which the child otherwise could attend pursuant to district open enrollment provisions, so long as that child meets all other eligibility requirement for participation in that extracurricular activity and his or her child's current school does not provide a comparable extracurricular activity at the student's grade level.
- (2) With written parental permission, a student of a private school is eligible to participate in any extracurricular activity sponsored by or engaged in by the public school to which the student would be assigned according to district school board attendance policies, or which the student could choose to attend pursuant to district open enrollment provisions, so long as his or her private school will not offer a comparable extracurricular activity at the student's grade level during the relevant school year. A student eligible under this section who is selected to participate in an extracurricular activity shall:

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- (a) Pay any participation or activity fee in an amount equal to the fee charged to public school participants;
  - (b) Adhere to the same standards of behavior, responsibility, performance, and code of conduct as any other participants in the extracurricular activity;
  - (c) Have his or her parent register with the public school his or her intent to have the student participate in the extracurricular activity as a representative of the public school before the beginning date of the semester for the activity in which he or she wishes the student to participate; and
  - (d) Be subject to the same eligibility requirements as other students participating in the activity.
- (3) A parent, teacher, or principal of a student of a private school participating in an extracurricular activity at a public school shall provide the principal of the public school an affidavit, on a schedule agreed to by the parent, teacher, or principal and public school principal, but no more frequently than monthly and confined to the minimum time period necessary to assure extracurricular activity eligibility compliance, to verify that:
- (a) The student is passing his or her coursework;
  - (b) The student is progressing toward graduation; and
  - (c) The student's school of attendance has not, and will not, provide a comparable extracurricular activity at the student's grade level during the relevant school year.
- (4) If a student enrolled in a public school fails to meet the public school's required academic standards, withdraws from the public school, and enrolls in a private school, the student shall be ineligible to participate in any interscholastic extracurricular activity at any public school for the remainder of the school year.
- (5) Transportation of a student of a private school to the public school to participate in an

extracurricular activity is the responsibility of the parent, guardian, or student. The student may use the same transportation as other students if additional expenses are not incurred by the district.

(6) A public school shall not discriminate against a student eligible under this section in the selection of extracurricular team or group members on the basis of parental choice of school type, public or private.

(7) A public school team or group shall not be impeded from competing against any other public school team or group solely because the public school team or group includes students eligible under this section.

(8) Nothing in this section shall establish authority for a local school district or the Kentucky Department of Education to regulate a private school student's education beyond authority established elsewhere in statute.

➔Section 10. This Act shall be known as the Parents Have the Say in Education Act."