

1 AN ACT relating to students.

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) For the purposes of this section:*

6 *(a) "Eligible student" shall mean the same as in KRS 160.700*

7 *(b) "Parent" means a person who has legal custody or control of the student,*  
8 *such as a mother, father, or guardian; and*

9 *(c) "Public school" has the same meaning as educational institution in KRS*  
10 *160.700, but also includes any program operated by an educational*  
11 *institution or an agent of an educational institution, including cloud*  
12 *computing services under KRS 365.734.*

13 *(2) The General Assembly finds and declares:*

14 *(a) The responsibility to provide the system of common schools within the*  
15 *Commonwealth belongs to the General Assembly alone under the Kentucky*  
16 *Constitution and that responsibility is not superseded by any federal or*  
17 *international law or institution;*

18 *(b) It is in the interests of the citizens of the Commonwealth to provide an*  
19 *education that promotes excellence in academics, prepares students for*  
20 *success in career and life, and does not include violations of their privacy*  
21 *through surveillance and data mining of their personal information;*

22 *(c) Digital records of students left behind can be used to create profiles, track*  
23 *behaviors, and potentially expose sensitive information that can have far-*  
24 *reaching and permanent consequences that influence a student's online*  
25 *reputation, impact future opportunities, and pose security risks;*

26 *(d) When personal information is sought from a minor, it should adhere to*  
27 *strict ethical and legal standards, with parental consent being fundamental*

- 1 to protecting a child's data, digital privacy, dignity, and well-being;
- 2 (e) The use of radio frequency identification technology to track and identify
- 3 individuals, when applied to minors, raises important privacy and security
- 4 concerns; and
- 5 (f) Requiring the consent of a child's parent prior to the use of radio frequency
- 6 identification technology on their child is a responsible practice that helps
- 7 safeguard the child's privacy, well-being, and security and ensures decisions
- 8 about technology use are made in the best interests of the child and in
- 9 accordance with legal and ethical standards.
- 10 (3) A public school shall be required to obtain a parent's express prior approval for a
- 11 child under the age of eighteen (18) to participate in any questionnaire, survey,
- 12 portrait, or program given by the public school that does not have a clear
- 13 academic purpose.
- 14 (4) (a) Parents shall have the right to make informed decisions regarding their
- 15 student's data and privacy to ensure the protection and dignity of the child.
- 16 (b) Digital records that are either created by a student or by a public school and
- 17 contain information about a student that is collected by a public school
- 18 shall be considered education records for the purpose of the Kentucky
- 19 Family Education Rights and Privacy Act, KRS 160.700 to 160.730.
- 20 (c) A public school shall provide notice to a student's parents or to an eligible
- 21 student that specifies any persons or organizations with which the public
- 22 school intends to share the digital records.
- 23 (d) A public school shall specify to a student's parent or an eligible student how
- 24 long digital records shall be held and how it shall be secured by the public
- 25 school.
- 26 (e) Digital records and any reports or analytics developed from those digital
- 27 records shall be available to inspection by parents of students or eligible

1 students under KRS 160.715.

2 (5) A public school shall not use any radio frequency identification technology that  
 3 tracks a student or collects data on a student unless the school has first received  
 4 the express consent of the student's parent or the eligible student, as applicable,  
 5 in advance. All such tracking or collected data shall also be considered education  
 6 records under KRS 160.700 to 160.730. All school districts and public charter  
 7 schools shall adopt policies and procedures to comply with this paragraph by  
 8 August 1, 2024.

9 (6) Any person injured by a violation of this section shall have a civil cause of action  
 10 in the Circuit Court of the county in which the violation occurred to:

11 (a) Enjoin further violations;

12 (b) Recover the actual damages sustained;

13 (c) Recover court costs, attorney's fees, and other reasonable litigation  
 14 expenses; and

15 (d) Seek any other appropriate relief.

16 ➔Section 2. KRS 158.191 is amended to read as follows:

17 (1) As used in this section:

18 (a) "External health care provider" means a provider of health or mental health  
 19 services that is not employed by or contracted with the school district to  
 20 provide services to the district's students;

21 (b) "Health services" has the same meaning as in KRS 156.502;

22 (c) "Mental health services" means services provided by a school-based mental  
 23 health services provider as defined in KRS 158.4416 but shall not include  
 24 academic or career counseling; and

25 (d) "Parent" means a person who has legal custody or control of the student such  
 26 as a mother, father, or guardian.

27 (2) Upon a student's enrollment and at the beginning of each school year, the district

1 shall provide a notification to the student's parents listing each of the health services  
2 and mental health services related to human sexuality, contraception, or family  
3 planning available at the student's school and of the parents' right to withhold  
4 consent or decline any of those specific services. A parent's consent to a health  
5 service or mental health service under this subsection shall not waive the parent's  
6 right to access the student's educational or health records held by the district or the  
7 notifications required under subsection (3) of this section.

8 (3) Except as provided in subsection (5) of this section, as part of a school district's  
9 effort to provide a safe and supportive learning environment for students, a school  
10 shall notify a student's parents if:

11 (a) The school changes the health services or mental health services related to  
12 human sexuality, contraception, or family planning that it provides, and shall  
13 obtain parental consent prior to providing health services or mental health  
14 services to the student; or

15 (b) School personnel make a referral:

16 1. For the student to receive a school's health services or mental health  
17 services; or

18 2. To an external health care provider, for which parental consent shall be  
19 obtained prior to the referral being made.

20 (4) School districts and district personnel shall respect the rights of parents to make  
21 decisions regarding the upbringing and control of the student through procedures  
22 encouraging students to discuss mental or physical health or life issues with their  
23 parents or through facilitating the discussion with their parents.

24 (5) (a) The Kentucky Board of Education or the Kentucky Department of Education  
25 shall not require or recommend that a local school district keep any student  
26 information confidential from a student's parents. A district or school shall not  
27 adopt policies or procedures with the intent of keeping any student

1 information confidential from parents.

2 (b) The Kentucky Board of Education or the Kentucky Department of Education  
3 shall not require or recommend policies or procedures for the use of pronouns  
4 that do not conform to a student's biological sex as indicated on the student's  
5 original, unedited birth certificate issued at the time of birth pursuant to KRS  
6 156.070(2)(g)2.

7 (c) A local school district shall not require school personnel or students to use  
8 pronouns for students that do not conform to that particular student's  
9 biological sex as referenced in paragraph (b) of this subsection.

10 (d) Nothing in this subsection shall prohibit a school district or district personnel  
11 from withholding information from a parent if a reasonably prudent person  
12 would believe, based on previous conduct and history, that the disclosure  
13 would result in the child becoming a dependent child or an abused or  
14 neglected child as defined in KRS 600.020. The fact that district personnel  
15 withhold information from a parent under this subsection shall not in itself  
16 constitute evidence of failure to report dependency, neglect, or abuse to the  
17 Cabinet for Health and Family Services under KRS 620.030.

18 (6) Except as provided in subsection (8) of this section, a local board of education  
19 shall adopt policies to prohibit the administration to a student of any  
20 psychological or psychiatric examination, test, or treatment, or any survey,  
21 analysis, or evaluation, without the prior written consent of the student's parent if  
22 the purpose or evident intended effect of the examination, test, treatment, survey,  
23 analysis, or evaluation is to cause the student to reveal information, personally  
24 identifiable or not, concerning the student's or student's family member's:

25 (a) Political affiliations or political philosophies;

26 (b) Mental or psychological problems;

27 (c) Sexual behavior, orientation, or attitudes;

- 1 (d) Illegal, antisocial, self-incriminating, or demeaning behavior;
- 2 (e) Critical appraisals of individuals with whom the student or family member
- 3 has close family relationships;
- 4 (f) Religious affiliations or beliefs;
- 5 (g) Legally recognized privileged and analogous relationships, such as those
- 6 with lawyers, medical personnel, or ministers; or
- 7 (h) Income, except as required by law~~[Prior to a well-being questionnaire or~~
- 8 ~~assessment, or a health screening form being given to a child for research~~
- 9 ~~purposes, a school district shall provide the student's parent with access to~~
- 10 ~~review the material and shall obtain parental consent. Parental consent shall~~
- 11 ~~not be a general consent to these assessments or forms but shall be required~~
- 12 ~~for each assessment or form. A parent's refusal to consent shall not be an~~
- 13 ~~indicator of having a belief regarding the topic of the assessment or form].~~
- 14 (7) The written parental consent required under subsection (6) of this section is valid
- 15 only if a parent has been first given written notice, including notice that a copy of
- 16 the educational or student survey questions to be posed to the student is made
- 17 available for the parent to view at the school, and a reasonable opportunity to
- 18 obtain written information concerning:
- 19 (a) Records or information, including information about relationships, that
- 20 may be examined and requested;
- 21 (b) The means by which the records or information may be examined or
- 22 reviewed;
- 23 (c) The means by which the information is to be obtained;
- 24 (d) The purposes for which the records of information are needed;
- 25 (e) The entities or persons, regardless of affiliation, who will have access to any
- 26 personally identifiable information; and
- 27 (f) A method by which a parent of a student can grant permission to access or

1 examine any personally identifiable information.

2 **(8)** Nothing in this section shall:

3 (a) Prohibit a school district or the district's personnel from asking for the name  
4 of a physician who regularly provides medical services to a student or  
5 seeking or providing emergency medical or mental health services for a  
6 student as outlined in the district's policies;~~or~~

7 (b) Prohibit a school district or district's personnel from attempting to  
8 determine if a student has been the victim or perpetrator of a crime; or

9 (c) Remove the duty to report pursuant to KRS 620.030 if district personnel has  
10 reasonable cause to believe the child is a dependent child or an abused or  
11 neglected child due to the risk of physical or emotional injury identified in  
12 KRS 600.020(1)(a)2. or as otherwise provided in that statute.

13 ➔Section 3. Section 1 of this Act may be cited as the Child and Family Privacy  
14 Protection Act.