

1 AN ACT relating to education professional certifications.

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

3 ➔Section 1. KRS 161.030 is amended to read as follows:

4 (1) Notwithstanding the age of the pupil, the certification of all teachers and other
5 school personnel, in public schools only, is vested in the Education Professional
6 Standards Board. When so certified, teachers and other school personnel shall not
7 be required to have licensure, certification, or other forms of approval from any
8 other state agency for the performance of their respective assignments within the
9 system of public schools, except as provided for by law. All certificates authorized
10 under KRS 161.010 to 161.126 shall be issued in accordance with the
11 administrative regulations of the Education Professional Standards Board. After
12 July 15, 1994, all certificate applications and other data collection instruments of
13 the board shall include a request for voluntary information about the applicant's
14 ethnic background. This information shall be available to help local school districts
15 locate minority candidates. A person who holds a certificate prior to this
16 requirement may request that ethnic information be added to his or her file. Nothing
17 in this section shall preclude the right of an individual in a nonpublic school from
18 seeking voluntary certification by the Education Professional Standards Board.

19 (2) Certificates shall be issued upon written application and in accordance with statutes
20 and regulations in effect at the time of application to persons who have completed,
21 at colleges, universities, or local school district programs approved by the
22 Education Professional Standards Board for the preparation of teachers and other
23 school personnel, the curricula prescribed by the administrative regulations of the
24 Education Professional Standards Board.

25 (3) (a) Certification of all new teachers and teachers seeking additional certification
26 shall require the successful completion of appropriate assessments prior to
27 certification. The assessments shall be selected by the Education Professional

1 Standards Board and shall measure knowledge in the specific teaching field of
2 the applicant, including content of the field and teaching of that content. The
3 Education Professional Standards Board shall determine the minimum
4 acceptable level of achievement on each assessment. The assessments shall
5 measure those concepts, ideas, and facts which are being taught in teacher
6 education programs in Kentucky. Upon successful completion of the
7 assessments and the approved teacher preparation program, a professional
8 certificate valid for five (5) years shall be issued.

9 (b) If an applicant for teacher certification has completed the approved teacher
10 preparation program and has taken but failed to successfully complete the
11 appropriate assessments selected by the Education Professional Standards
12 Board, a conditional certificate may be issued for a period not to exceed one
13 (1) year. The employing school district, in collaboration with the teacher
14 education institution, shall provide technical assistance and mentoring support
15 to the conditionally certified teacher. The teacher shall retake the assessments
16 during the validity period of the conditional certificate. The conditional
17 certificate shall not be reissued. Upon successful completion of the required
18 assessments, a professional certificate valid for five (5) years shall be issued.
19 The Education Professional Standards Board shall promulgate administrative
20 regulations to establish the standards and procedures for issuance of a
21 conditional certificate.

22 (c) If an out-of-state teacher with less than two (2) years' experience comes to
23 Kentucky after the deadline for taking the assessments, a temporary certificate
24 may be issued for a period up to six (6) months. The teacher shall take the
25 assessments during the period of the temporary certificate. If the teacher fails
26 the assessments, the temporary certificate shall be valid only for the current
27 semester. If the teacher passes the assessments, a professional certificate valid

1 for five (5) years shall be issued.

2 (4) A reasonable fee to be paid by the teacher and directly related to the actual cost of
3 the administration of the assessments shall be established by the Education
4 Professional Standards Board. Provisions shall be made for persons having less than
5 minimum levels of performance on any assessment to repeat that assessment, and
6 candidates shall be informed of their strengths and weaknesses in the specific
7 performance areas. The Education Professional Standards Board shall provide for
8 confidentiality of the individual assessment scores. Scores shall be available only to
9 the candidate and to the education officials who are responsible for determining
10 whether established certification standards have been met. Scores shall be used only
11 in the assessment for certification of new teachers and of out-of-state teachers with
12 less than two (2) years of teaching experience who are seeking initial certification
13 in Kentucky.

14 (5) If an applicant establishes eligibility for a five (5) year professional certificate under
15 the provisions of subsection (3)(a) of this section, the applicant shall also be eligible
16 for the issuance of a certificate for substitute teaching as provided by the
17 administrative regulations of the Education Professional Standards Board.

18 (6) (a) The Education Professional Standards Board shall issue a ten (10) year
19 emeritus certificate to an applicant who has:

- 20 1. Retired or will retire not more than one (1) year prior to the expiration
21 date of the certificate;
- 22 2. Met the requirements to receive an emeritus certificate as set forth in
23 administrative regulation promulgated by the Education Professional
24 Standards Board; and
- 25 3. Completed the required application unless the provisions of KRS
26 161.120 apply.

27 (b) The Education Professional Standards Board shall issue a one (1) time five (5)

- 1 year exception certificate to an individual:
- 2 1. Whose certificate has expired;
 - 3 2. Whose rank upon expiration was Rank I or Rank II;
 - 4 3. Who has met the requirements to receive an exception certificate as set
 - 5 forth in administrative regulation promulgated by the Education
 - 6 Professional Standards Board;
 - 7 4. Who completed three (3) years of classroom instruction prior to the
 - 8 certificate's expiration; and
 - 9 5. Who has completed the required application unless the provisions of
 - 10 KRS 161.120 apply.

11 (7) The Education Professional Standards Board shall approve the curricula of any
12 college or university, or of any department thereof, for the training of teachers, and
13 any nontraditional or alternative teacher preparation program offered in a public or
14 private postsecondary education institution, private contractor, or state agency, and
15 shall also approve the curricula of any local district alternative certification
16 program, when the curricula comply with the administrative regulations of the
17 Education Professional Standards Board for the issuance of certificates and when
18 the institution has met the terms and conditions provided in KRS 161.010 to
19 161.120. Any student who has completed any of these curricula, as approved by the
20 Education Professional Standards Board, and who has completed the prescribed
21 requirements for the issuance of certificates shall be granted a certificate
22 corresponding to the curricula completed.

23 (8) The issuance of any certificate, except emergency certificates issued pursuant to
24 KRS 161.100, by the Education Professional Standards Board shall not be
25 dependent upon an offer of employment. The certification process, except for
26 emergency certificates, is independent of any job prospects and certification shall
27 be awarded on the basis of completing a teacher preparation program or an

1 alternative certification pathway and passing required assessments.

2 **(9) (a) Certificates shall not be issued to, or renewed for, an individual who has**
3 **been treated for or diagnosed with any disorder that is excluded from the**
4 **Americans with Disabilities Act of 1990, 42 U.S.C. sec. 12101 et seq. by a**
5 **licensed medical professional, as these disorders were defined in the**
6 **Diagnostic and Statistical Manual of Mental Disorders (Third Edition,**
7 **Revised), at the time that federal act was passed.**

8 **(b) An application for certification or renewal shall include a statement from**
9 **the applicant, attesting under penalty of perjury that the applicant has never**
10 **been treated for or diagnosed with a disorder referenced in paragraph (a) of**
11 **this subsection by a licensed medical professional.**

12 **(c) The State Board of Medical Licensure, the Kentucky Board of Nursing, and**
13 **the Kentucky Board of Examiners of Psychology shall promulgate**
14 **administrative regulations in accordance with KRS Chapter 13A to require**
15 **licensees to diagnose the disorders referenced in paragraph (a) of this**
16 **subsection based on the disorder definitions in the Diagnostic and**
17 **Statistical Manual of Mental Disorders (Third Edition, Revised).**

18 ➔Section 2. KRS 161.120 is amended to read as follows:

19 (1) Except as described in KRS 161.795, the Education Professional Standards Board
20 may revoke, suspend, or refuse to issue or renew; impose probationary or
21 supervisory conditions upon; issue a written reprimand or admonishment; or any
22 combination of those actions regarding any certificate issued under KRS 161.010 to
23 161.100, or any certificate or license issued under any previous law to
24 superintendents, principals, teachers, substitute teachers, interns, supervisors,
25 directors of pupil personnel, or other administrative, supervisory, or instructional
26 employees for the following reasons:

27 (a) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to,

1 notwithstanding an order granting probation or suspending imposition of any
2 sentence imposed following the conviction or entry of the plea, one (1) of the
3 following:

- 4 1. A felony;
- 5 2. A misdemeanor under KRS Chapter 218A, 508, 509, 510, 522, 525,
6 529, 530, or 531; or
- 7 3. A misdemeanor involving a student or minor.

8 A certified copy of the conviction or plea shall be conclusive evidence of the
9 conviction or plea;

10 (b) Having sexual contact as defined in KRS 510.010(7) with a student or minor.
11 Conviction in a criminal proceeding shall not be a requirement for
12 disciplinary action;

13 (c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral
14 conduct. If the act constitutes a crime, conviction in a criminal proceeding
15 shall not be a condition precedent to disciplinary action;

16 (d) Demonstrating willful or careless disregard for the health, welfare, or safety
17 of others;

18 (e) Physical or mental incapacity that prevents the certificate holder from
19 performing duties with reasonable skill, competence, or safety;

20 (f) *Having been treated for or diagnosed with a disorder referenced in*
21 *subsection (9) of Section 1 of this Act;*

22 (g) Possessing, using, or being under the influence of alcohol, which impairs the
23 performance of duties;

24 ~~(h)(g)~~ Unlawfully possessing or unlawfully using a drug during the
25 performance of duties;

26 ~~(i)(h)~~ Incompetency or neglect of duty;

27 ~~(j)(i)~~ Making, or causing to be made, any false or misleading statement or

1 concealing a material fact in obtaining issuance or renewal of any certificate;

2 ~~(k)(j)~~ Failing to report as required by subsection (3) of this section;

3 ~~(l)(k)~~ Failing to comply with an order of the Education Professional Standards
4 Board;

5 ~~(m)(l)~~ Violating any state statute relating to schools or the teaching profession;

6 ~~(n)(m)~~ Violating the professional code of ethics for Kentucky school certified
7 personnel established by the Education Professional Standards Board through
8 the promulgation of administrative regulation;

9 ~~(o)(n)~~ Violating any administrative regulation promulgated by the Education
10 Professional Standards Board or the Kentucky Board of Education; or

11 ~~(p)(o)~~ Receiving disciplinary action or having the issuance of a certificate
12 denied or restricted by another jurisdiction on grounds that constitute a
13 violation of this subsection.

14 (2) The Education Professional Standards Board shall respond to complaints against a
15 certificate holder by the following process:

16 (a) 1. Except as provided in subparagraph 2. of this paragraph, within thirty
17 (30) calendar days of the receipt of a completed complaint, board staff
18 shall conduct an initial review to determine whether there is sufficient
19 evidence that a violation may have occurred and shall provide notice of
20 the initial determination to the certificate holder within seven (7)
21 business days that shall include the complete copy of the report and all
22 underlying relevant documents and records. If the complaint alleges
23 unauthorized electronic communication as defined in KRS 160.145,
24 sexual contact, or other sexual misconduct, the identity of a complainant
25 that is not the superintendent and any identifying information of the
26 minor involved in the complaint shall remain confidential.

27 2. When a complaint alleges unauthorized electronic communication, as

1 defined in KRS 160.145, sexual contact, or other sexual misconduct, the
2 board staff shall have one hundred twenty (120) days to conduct the
3 initial review required by subparagraph 1. of this paragraph;

4 (b) Upon receipt of the notice, the certificate holder shall have thirty (30)
5 calendar days to respond or provide a rebuttal to any complaint that was
6 determined to contain sufficient evidence that a violation may have occurred.
7 The response period shall be extended an additional thirty (30) calendar days
8 upon the certificate holder's written request submitted to the board;

9 (c) Within ten (10) business days of the receipt of the certificate holder's response
10 or the end of the response period established in paragraph (b) of this
11 subsection, board staff shall conduct another review of the complaint to
12 determine if sufficient evidence exists to support a violation. If the board staff
13 determines that the evidence is:

14 1. Insufficient, then the board staff shall recommend dismissal and shall
15 notify the certificate holder and the complainant of the recommendation
16 within seven (7) business days of the determination; or

17 2. Sufficient, then the board staff shall have seven (7) business days to
18 notify the certificate holder and the complainant of the determination.
19 Notice to the complainant shall only state that further proceedings will
20 occur;

21 (d) Upon a determination that sufficient evidence exists to support a possible
22 violation, within the notice required under paragraph (c)2. of this subsection,
23 board staff shall initiate an in-person or virtual conference with the certificate
24 holder to share information and to determine if an agreed resolution can be
25 recommended to the board concerning the alleged violation. The conference
26 shall be scheduled within thirty (30) calendar days of the determination. The
27 certificate holder may decline the conference. If the conference does not occur

- 1 due to the certificate holder's failure to respond within the thirty (30) calendar
2 days, the required conference shall be considered waived. The certificate
3 holder may have an attorney present at the conference;
- 4 (e) Upon the conclusion of the thirty (30) calendar days conference period, the
5 board shall act on the complaint within thirty (30) calendar days. If the board
6 fails to act on the complaint within the thirty (30) calendar days, then the
7 complaint shall be considered dismissed. The board shall consider the entirety
8 of the complaint with any associated response or recommended agreed
9 resolution to determine:
- 10 1. Dismissal, conditional dismissal upon completion of training,
11 admonishment, further investigation, or initiation of a hearing;
 - 12 2. Approval of the recommended agreed resolution; or
 - 13 3. A deferral if:
 - 14 a. The content of the complaint is subject to ongoing:
 - 15 i. Criminal investigation or proceedings;
 - 16 ii. Child abuse, dependency, or neglect investigation by an
17 authorized state agency; or
 - 18 iii. Teacher tribunal process as provided in KRS 161.790; or
 - 19 b. The deferral is agreed to by the certificate holder; and
- 20 (f) The provision of a confirmation of receipt from the board to the certificate
21 holder whenever the certificate holder submits a response or correspondence
22 to the board.
- 23 (3) (a) The superintendent of each local school district shall report in writing to the
24 Education Professional Standards Board the name, address, phone number,
25 Social Security number, and position name of any certified school employee
26 in the employee's district whose contract is terminated or not renewed, for
27 cause except failure to meet local standards for quality of teaching

1 performance prior to the employee gaining tenure; who resigns from, or
2 otherwise leaves, a position under threat of contract termination, or
3 nonrenewal, for cause; who is convicted in a criminal prosecution; or who
4 otherwise may have engaged in any actions or conduct while employed in the
5 school district that might reasonably be expected to warrant consideration for
6 action against the certificate under subsection (1) of this section. The duty to
7 report shall exist without regard to any disciplinary action, or lack thereof, by
8 the superintendent, and the required report shall be submitted within thirty
9 (30) calendar days of the event giving rise to the duty to report.

10 (b) The district superintendent shall inform the Education Professional Standards
11 Board in writing of the full facts and circumstances leading to the contract
12 termination or nonrenewal, resignation, or other absence, conviction, or
13 otherwise reported actions or conduct of the certified employee, that may
14 warrant action against the certificate under subsection (1) of this section, and
15 shall forward copies of all relevant documents and records in his or her
16 possession.

17 (c) The Education Professional Standards Board shall provide the superintendent
18 confirmation of receipt of any report submitted by the superintendent within
19 seven (7) business days and shall provide the superintendent with notice of:

- 20 1. Whether or not board staff determine that there is sufficient evidence in
21 the report that a violation may have occurred; and
- 22 2. Any board action taken against the certificate holder who is the subject
23 of the report.

24 (d) The Education Professional Standards Board may consider reports and
25 information received from other sources.

26 (e) The certified school employee shall be given a copy of any report provided to
27 the Education Professional Standards Board by the district superintendent or

1 other sources. The employee shall have the right to file a written rebuttal
2 pursuant to subsection (2) of this section to the report which shall be placed in
3 the official file with the report.

4 (4) A finding or action by a school superintendent or tribunal does not create a
5 presumption of a violation or lack of a violation of subsection (1) of this section.

6 (5) The board may issue a written admonishment to the certificate holder if the board
7 determines, based on the evidence, that a violation has occurred that is not of a
8 serious nature. A copy of the written admonishment shall be placed in the official
9 file of the certificate holder. The certificate holder may respond in writing to the
10 admonishment within thirty (30) calendar days of receipt and have that response
11 placed in his or her official certification file. Alternatively, the certificate holder
12 may file a request for a hearing with the board within thirty (30) calendar days of
13 receipt of the admonishment. Upon receipt of a request for a hearing, the board
14 shall set aside the written admonishment and set the matter for hearing pursuant to
15 the provisions of KRS Chapter 13B within thirty (30) calendar days of receipt of the
16 request.

17 (6) (a) In accordance with the timeline specified in this section, the Education
18 Professional Standards Board shall schedule and conduct a hearing in
19 accordance with KRS Chapter 13B:

20 1. Upon determining that a complaint warrants possible revoking,
21 suspending, refusing to renew, imposing probationary or supervisory
22 conditions upon, issuing a written reprimand, or any combination of
23 these actions regarding any certificate;

24 2. After denying an application for a certificate, upon written request filed
25 within thirty (30) calendar days of receipt of the letter advising of the
26 denial; or

27 3. After issuing a written admonishment, upon written request for a

1 hearing filed within thirty (30) calendar days of receipt of the written
2 admonishment.

3 (b) If after the hearing required under paragraph (a) of this subsection is
4 scheduled and the certificate holder or applicant believes the hearing is not
5 timely, the certificate holder or applicant may submit a request for an
6 expedited hearing, and the hearing shall be conducted within sixty (60)
7 calendar days of the request.

8 (c) Upon request, a hearing may be public or private at the discretion of the
9 certified employee or applicant.

10 (d) The hearing shall be conducted before a hearing officer secured by the board
11 pursuant to KRS 13B.030 and the board may:

- 12 1. Employ hearing officers;
- 13 2. Contract with another agency for hearing officers;
- 14 3. Contract with private attorneys through personal service contracts; or
- 15 4. Secure a hearing officer from the Attorney General's office.

16 (e) The hearing shall afford the certificate holder all the rights secured under KRS
17 Chapter 13B.

18 (7) The Education Professional Standards Board or its chair may take emergency action
19 pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's
20 contract or tenure rights in the school district.

21 (8) If the Education Professional Standards Board substantiates that sexual contact
22 occurred between a certified employee and a student or minor, the employee's
23 certificate may be revoked or suspended with mandatory treatment of the employee
24 as prescribed by the Education Professional Standards Board. The Education
25 Professional Standards Board may require the employee to pay a specified amount
26 for mental health services for the student or minor which are needed as a result of
27 the sexual contact.

- 1 (9) At any time during the investigative or hearing processes, the board may enter into
2 an agreed order or accept an assurance of voluntary compliance with the certificate
3 holder.
- 4 (10) The board may reconsider, modify, or reverse its decision on any disciplinary
5 action.
- 6 (11) Suspension of a certificate shall be for a specified period of time, not to exceed two
7 (2) years.
- 8 (a) At the conclusion of the specified period, upon demonstration of compliance
9 with any educational requirements and the terms set forth in the agreed order,
10 the certificate shall be reactivated.
- 11 (b) A suspended certificate is subject to expiration and termination.
- 12 (12) Revocation of a certificate is a permanent forfeiture. The board shall establish the
13 minimum period of time before an applicant can apply for a new certificate.
- 14 (a) At the conclusion of the specified period, and upon demonstration of
15 compliance with any educational requirements and the terms set forth in the
16 agreed order, the applicant shall bear the burden of proof to show that he or
17 she is again fit for practice.
- 18 (b) The board shall have discretion to impose conditions that it deems reasonably
19 appropriate to ensure the applicant's fitness and the protection of public
20 safety. Any conditions imposed by the board shall address or apply to only
21 that time period after the revocation of the certificate.
- 22 (13) An appeal from any final order of the Education Professional Standards Board shall
23 be filed in Franklin Circuit Court or the Circuit Court of the county in which the
24 certificate holder was employed when the incident occurred in accordance with
25 KRS Chapter 13B which provides that all final orders of an agency shall be subject
26 to judicial review.
- 27 **(14) (a) The Education Professional Standards Board shall promptly investigate and**

1 respond to all complaints against a certificate holder alleging that the
2 certificate holder exhibits easily identifiable behavioral signs or symptoms
3 characteristic of a disorder referenced in subsection (9) of Section 1 of this
4 Act.

5 **(b) Upon a determination that sufficient evidence exists to support a finding**
6 **that the certificate holder may qualify for a diagnosis of a disorder**
7 **referenced in subsection (9) of Section 1 of this Act, the Education**
8 **Professional Standards Board shall compel the certificate holder to submit**
9 **to a medical examination within thirty (30) calendar days as a condition of**
10 **continued certification. The medical examination shall evaluate whether the**
11 **certificate holder meets the diagnostic criteria for the applicable disorder as**
12 **in the Diagnostic and Statistical Manual of Mental Disorders, (Third**
13 **Edition, Revised), at the time that the Americans with Disabilities Act of**
14 **1990, 421 U.S.C. sec. 12101 et. seq., was passed. If the certificate holder**
15 **meets the diagnostic criteria, a diagnosis shall be issued.**

16 **(c) The certificate holder shall provide all medical findings relevant to this**
17 **subsection, including determination of a potential diagnosis of a disorder**
18 **referenced in subsection (9) of Section 1 of this Act, to the Educational**
19 **Professional Standards Board within three (3) business days of the medical**
20 **examination.**