

1 AN ACT relating to school employee and volunteer misconduct.

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) As used in this section:

6 (a) "Parent" means a parent, legal guardian, or other person or agency
7 responsible for a student;

8 (b) "School district employee or volunteer" means a school administrator,
9 classified or certified employee of a school district, school volunteer,
10 nonfaculty coach or assistant coach, student teacher, or sponsor of an
11 extracurricular program or activity;

12 (c) "Traceable communication system" means one (1) or more electronic
13 school notification and communication programs or applications that:

14 1. Are designated by a local board of education in accordance with
15 subsection (2) of this section;

16 2. Trace all communications sent to or by a student; and

17 3. Provide parents an opportunity to access and review those
18 communications; and

19 (d) "Unauthorized electronic communication":

20 1. Means a school district employee or volunteer's electronic
21 communication with a student that is not his or her own child that
22 occurs outside of a designated traceable communication system and
23 without prior written parental consent; and

24 2. Includes any personal email account, text messaging, social media, or
25 other direct messaging systems outside of the traceable
26 communication system.

27 (2) Each local board of education shall designate a traceable communication system

1 to be the exclusive means for a school district employee or volunteer to
2 communicate electronically with students.

3 (3) (a) Except as provided in subsections (4) and (5) of this section, a school
4 district employee or volunteer shall not communicate electronically with a
5 student:

6 1. Outside of the traceable communication system designated by the local
7 board of education; or

8 2. Through an unauthorized electronic communication program or
9 application, including a personal email account, text messaging, social
10 media, or other direct messaging systems.

11 (b) A school district employee that violates paragraph (a) of this subsection
12 shall be subject to disciplinary action in accordance with:

13 1. For certified employees, Section 2 of this Act and KRS 161.790; or

14 2. For classified employees, KRS 161.011(7).

15 (c) A school volunteers that violates paragraph (a) of this subsection shall be
16 prohibited from future school volunteer opportunities.

17 (4) A parent may submit written consent to authorize a designated school district
18 employee or volunteer to communicate electronically with his or her child outside
19 of the traceable communication system. The written consent:

20 (a) Shall be filed in the administrative office of the student's school prior to any
21 electronic communication being sent from school district employee or
22 volunteer to a student outside of the traceable communication system;

23 (b) Shall designate a single, specific school district employee or volunteer per
24 each consent form that may communicate with the student outside of the
25 traceable communication system and shall not be transferable to any other
26 school district employee;

27 (c) May be revoked by a parent at any time;

- 1 (d) May establish terms limiting electronic communication with a student,
2 including a term requiring that a parent be included as a direct party to all
3 electronic communications sent to the student outside of the traceable
4 communication system or establishing an expiration for the term of the
5 consent. Any electronic communication with a student outside of the
6 traceable communication system shall comply with all terms of the written
7 consent; and
- 8 (e) Shall not authorize a school district employee to engage in inappropriate or
9 sexual electronic communication with a student or be used as a basis of a
10 defense for a school district employee that engages inappropriate or sexual
11 electronic communication.
- 12 (5) Notwithstanding subsections (2) and (3) of this section, this section shall not
13 restrict any electronic communications between a parent that is a school district
14 employee or volunteer and his or her own children.
- 15 (6) (a) A school district employee or volunteer that receives a report alleging that
16 another school district employee participated in unauthorized electronic
17 communication shall immediately notify the supervising principal. If the
18 subject of the report is the principal, the employee shall immediately notify
19 the superintendent of the school district. If the subject of the report is the
20 superintendent, the employee shall immediately notify the commissioner of
21 education and the chair of the local board of education.
- 22 (b) A school district employee that violates paragraph (a) of this subsection
23 shall be subject to disciplinary action in accordance with:
- 24 1. For certified employees, Section 2 of this Act and KRS 161.790; or
25 2. For classified employees, KRS 161.011(7).
- 26 (7) (a) Upon receipt of a report alleging that a school district employee or
27 volunteer participated in unauthorized electronic communication, the

commissioner of education, a principal, or a superintendent shall immediately:

1. Notify the parent of each student that is an alleged party to the unauthorized electronic communications; and

2. a. If the individual that is the subject of the report is a certified employee:

i. Notify the Education Professional Standards Board. The Education Professional Standards Board shall promptly investigate all allegations received under this subsection and proceed with appropriate disciplinary actions in accordance with Section 2 of this Act; and

ii. Investigate the underlying allegations and proceed with appropriate disciplinary actions in accordance with KRS 161.790;

b. If the individual that is the subject of the report is a classified employee, investigate the underlying allegations and proceed with appropriate disciplinary actions in accordance with KRS 161.011(7); and

c. If the individual that is the subject of the report is a school volunteer, the volunteer shall be prohibited from future school volunteer opportunities.

(b) A principal or superintendent that violates paragraph (a) of this subsection shall be subject to disciplinary action in accordance with Section 2 of this Act and KRS 156.132.

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

(1) Except as described in KRS 161.795, the Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or

1 supervisory conditions upon; issue a written reprimand or admonishment; or any
2 combination of those actions regarding any certificate issued under KRS 161.010 to
3 161.100, or any certificate or license issued under any previous law to
4 superintendents, principals, teachers, substitute teachers, interns, supervisors,
5 directors of pupil personnel, or other administrative, supervisory, or instructional
6 employees for the following reasons:

7 (a) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to,
8 notwithstanding an order granting probation or suspending imposition of any
9 sentence imposed following the conviction or entry of the plea, one (1) of the
10 following:

- 11 1. A felony;
- 12 2. A misdemeanor under KRS Chapter 218A, 508, 509, 510, 522, 525,
13 529, 530, or 531; or
- 14 3. A misdemeanor involving a student or minor.

15 A certified copy of the conviction or plea shall be conclusive evidence of the
16 conviction or plea;

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

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

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

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

27 (f) Possessing, using, or being under the influence of alcohol, which impairs the

- 1 performance of duties;
- 2 (g) Unlawfully possessing or unlawfully using a drug during the performance of
- 3 duties;
- 4 (h) Incompetency or neglect of duty;
- 5 (i) Making, or causing to be made, any false or misleading statement or
- 6 concealing a material fact in obtaining issuance or renewal of any certificate;
- 7 (j) Failing to report as required by subsection (3) of this section;
- 8 (k) Failing to comply with an order of the Education Professional Standards
- 9 Board;
- 10 (l) Violating any state statute relating to schools or the teaching profession;
- 11 (m) Violating the professional code of ethics for Kentucky school certified
- 12 personnel established by the Education Professional Standards Board through
- 13 the promulgation of administrative regulation;
- 14 (n) Violating any administrative regulation promulgated by the Education
- 15 Professional Standards Board or the Kentucky Board of Education; or
- 16 (o) Receiving disciplinary action or having the issuance of a certificate denied or
- 17 restricted by another jurisdiction on grounds that constitute a violation of this
- 18 subsection.
- 19 (2) The Education Professional Standards Board shall respond to complaints against a
- 20 certificate holder by the following process:
- 21 (a) **1. Except as provided in subparagraph 2. of this paragraph,** within thirty
- 22 (30) calendar days of the receipt of a completed complaint, board staff
- 23 shall conduct an initial review to determine whether there is sufficient
- 24 evidence that a violation may have occurred and shall provide notice of
- 25 the initial determination to the certificate holder within seven (7)
- 26 business days that shall include the complete copy of the report and all
- 27 underlying relevant documents and records. **If the complaint alleges**

unauthorized electronic communication, sexual contact, or other sexual misconduct, the identity of a complainant that is not the superintendent and any identifying information of minor involved in the complaint shall remain confidential.^[1]

2. When a complaint alleges unauthorized electronic communication, as defined in Section 1 of this Act, sexual contact, or other sexual misconduct, the board staff shall have one hundred and twenty (120) days to conduct the initial review required by subparagraph 1. of this paragraph;

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

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

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

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

(d) Upon a determination that sufficient evidence exists to support a possible

1 violation, within the notice required under paragraph (c)2. of this subsection,
2 board staff shall initiate an in-person or virtual conference with the certificate
3 holder to share information and to determine if an agreed resolution can be
4 recommended to the board concerning the alleged violation. The conference
5 shall be scheduled within thirty (30) calendar days of the determination. The
6 certificate holder may decline the conference. If the conference does not occur
7 due to the certificate holder's failure to respond within the thirty (30) calendar
8 days, the required conference shall be considered waived. The certificate
9 holder may have an attorney present at the conference;

10 (e) Upon the conclusion of the thirty (30) calendar days conference period, the
11 board shall act on the complaint within thirty (30) calendar days. If the board
12 fails to act on the complaint within the thirty (30) calendar days, then the
13 complaint shall be considered dismissed. The board shall consider the entirety
14 of the complaint with any associated response or recommended agreed
15 resolution to determine:

- 16 1. Dismissal, conditional dismissal upon completion of training,
17 admonishment, further investigation, or initiation of a hearing;
- 18 2. Approval of the recommended agreed resolution; or
- 19 3. A deferral if:
 - 20 a. The content of the complaint is subject to ongoing:
 - 21 i. Criminal investigation or proceedings;
 - 22 ii. Child abuse, dependency, or neglect investigation by an
23 authorized state agency; or
 - 24 iii. Teacher tribunal process as provided in KRS 161.790; or
 - 25 b. The deferral is agreed to by the certificate holder; and

26 (f) The provision of a confirmation of receipt from the board to the certificate
27 holder whenever the certificate holder submits a response or correspondence

1 to the board.

2 (3) (a) The superintendent of each local school district shall report in writing to the
3 Education Professional Standards Board the name, address, phone number,
4 Social Security number, and position name of any certified school employee
5 in the employee's district whose contract is terminated or not renewed, for
6 cause except failure to meet local standards for quality of teaching
7 performance prior to the employee gaining tenure; who resigns from, or
8 otherwise leaves, a position under threat of contract termination, or
9 nonrenewal, for cause; who is convicted in a criminal prosecution; or who
10 otherwise may have engaged in any actions or conduct while employed in the
11 school district that might reasonably be expected to warrant consideration for
12 action against the certificate under subsection (1) of this section. The duty to
13 report shall exist without regard to any disciplinary action, or lack thereof, by
14 the superintendent, and the required report shall be submitted within thirty
15 (30) calendar days of the event giving rise to the duty to report.

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

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

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

1 of the report.

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

4 (e) The certified school employee shall be given a copy of any report provided to
5 the Education Professional Standards Board by the district superintendent or
6 other sources. The employee shall have the right to file a written rebuttal
7 pursuant to subsection (2) of this section to the report which shall be placed in
8 the official file with the report.

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

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

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

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

- 1 2. After denying an application for a certificate, upon written request filed
- 2 within thirty (30) calendar days of receipt of the letter advising of the
- 3 denial; or
- 4 3. After issuing a written admonishment, upon written request for a
- 5 hearing filed within thirty (30) calendar days of receipt of the written
- 6 admonishment.
- 7 (b) If after the hearing required under paragraph (a) of this subsection is
- 8 scheduled and the certificate holder or applicant believes the hearing is not
- 9 timely, the certificate holder or applicant may submit a request for an
- 10 expedited hearing, and the hearing shall be conducted within sixty (60)
- 11 calendar days of the request.
- 12 (c) Upon request, a hearing may be public or private at the discretion of the
- 13 certified employee or applicant.
- 14 (d) The hearing shall be conducted before a hearing officer secured by the board
- 15 pursuant to KRS 13B.030 and the board may:
- 16 1. Employ hearing officers;
- 17 2. Contract with another agency for hearing officers;
- 18 3. Contract with private attorneys through personal service contracts; or
- 19 4. Secure a hearing officer from the Attorney General's office.
- 20 (e) The hearing shall afford the certificate holder all the rights secured under KRS
- 21 Chapter 13B.
- 22 (7) The Education Professional Standards Board or its chair may take emergency action
- 23 pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's
- 24 contract or tenure rights in the school district.
- 25 (8) If the Education Professional Standards Board substantiates that sexual contact
- 26 occurred between a certified employee and a student or minor, the employee's
- 27 certificate may be revoked or suspended with mandatory treatment of the employee

1 as prescribed by the Education Professional Standards Board. The Education
2 Professional Standards Board may require the employee to pay a specified amount
3 for mental health services for the student or minor which are needed as a result of
4 the sexual contact.

5 (9) At any time during the investigative or hearing processes, the board may enter into
6 an agreed order or accept an assurance of voluntary compliance with the certificate
7 holder.

8 (10) The board may reconsider, modify, or reverse its decision on any disciplinary
9 action.

10 (11) Suspension of a certificate shall be for a specified period of time, not to exceed two
11 (2) years.

12 (a) At the conclusion of the specified period, upon demonstration of compliance
13 with any educational requirements and the terms set forth in the agreed order,
14 the certificate shall be reactivated.

15 (b) A suspended certificate is subject to expiration and termination.

16 (12) Revocation of a certificate is a permanent forfeiture. The board shall establish the
17 minimum period of time before an applicant can apply for a new certificate.

18 (a) At the conclusion of the specified period, and upon demonstration of
19 compliance with any educational requirements and the terms set forth in the
20 agreed order, the applicant shall bear the burden of proof to show that he or
21 she is again fit for practice.

22 (b) The board shall have discretion to impose conditions that it deems reasonably
23 appropriate to ensure the applicant's fitness and the protection of public
24 safety. Any conditions imposed by the board shall address or apply to only
25 that time period after the revocation of the certificate.

26 (13) An appeal from any final order of the Education Professional Standards Board shall
27 be filed in Franklin Circuit Court or the Circuit Court of the county in which the

1 certificate holder was employed when the incident occurred in accordance with
2 KRS Chapter 13B which provides that all final orders of an agency shall be subject
3 to judicial review.