

CHAPTER 76

(HB 538)

AN ACT relating to discipline of students.

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

➔Section 1. KRS 158.150 is amended to read as follows:

- (1) All ~~students~~~~[pupils]~~ admitted to the common schools shall comply with the lawful regulations for the government of the schools:
 - (a) Willful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, assault or battery or abuse of other students, the threat of force or violence, the use or possession of alcohol or drugs, stealing or destruction or defacing of school property or personal property of students, the carrying or use of weapons or dangerous instruments, or other incorrigible bad conduct on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school; and
 - (b) Assault or battery or abuse of school personnel; stealing or willfully or wantonly defacing, destroying, or damaging the personal property of school personnel on school property, off school property, or at school-sponsored activities constitutes cause for suspension or expulsion from school.
- (2) (a) Each local board of education shall adopt a policy requiring the expulsion from school for a period of *at least twelve (12) months*~~[not less than one (1) year]~~ for a student who:
 1. *Is determined by the board through clear and convincing evidence to have made threats that pose a danger to the well-being of students, faculty, or staff of the district; or*
 2. Is determined by the board to have brought a weapon to a school under its jurisdiction. In determining whether a student has brought a weapon to school, a local board of education shall use the definition of "unlawful possession of a weapon on school property" stated in KRS 527.070.

(b) The board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have:

 1. Possessed prescription drugs or controlled substances for the purpose of sale or distribution at a school under the board's jurisdiction;~~[, or to have]~~
 2. Physically assaulted or battered or abused educational personnel or other students at a school or school function under the board's jurisdiction; *or*
 3. *Physically assaulted, battered, or abused educational personnel or other students off school property and the incident is likely to substantially disrupt the educational process.*
- (3) (a) The board may modify the expulsion requirement *and length* for students on a case-by-case basis, *except the length of expulsion shall be at least twelve (12) months for a violation set forth in subsection (2)(a) of this section.*
- (b) *Nothing in this section shall prohibit a board from expelling a student for longer than twelve (12) months.*
- (c) A board that has expelled a student from the student's regular school setting shall provide or ~~ensure~~~~[assure]~~ that educational services are provided to the student in an appropriate alternative program or setting, unless the board has made a determination, on the record, supported by clear and convincing evidence, that the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program. Behavior which constitutes a threat shall include but not be limited to the physical assault, battery, or abuse of others; the threat of physical force; being under the influence of drugs or alcohol; the use, possession, sale, or transfer of drugs or alcohol; the carrying, possessing, or transfer of weapons or dangerous instruments; and any other behavior which may endanger the safety of others. Other intervention services as indicated for each student may be provided by the board or by agreement with the appropriate state or community agency. A state agency that provides the service shall be responsible for the cost.

- (d) 1. *In lieu of expelling a student, or upon the expiration of a student's expulsion, a superintendent may place a student into an alternative program or setting if the superintendent determines placement of the student in his or her regular school setting is likely to substantially disrupt the education process or constitutes a threat to the safety of other students or school staff. The action shall not be taken until the parent, guardian, or other person having legal custody or control of the student has had an opportunity to have a hearing before the board or an appeals committee as described in subparagraph 2. of this paragraph.*
2. *The board may adopt a policy to establish an appeals committee and delegate the authority to hear appeals made under this paragraph to that committee.*
3. *The alternative program or setting may be provided virtually.*
4. *Notwithstanding any other statute or administrative regulation to the contrary, students placed in an alternative program or setting under this paragraph shall be counted in attendance and membership for state funding purposes in the same manner as other students participating in alternative programs of the district.*
5. *Students placed in an alternative program or setting under this paragraph shall be subject to compulsory attendance requirements under KRS Chapter 159 and applicable local board policy.*
6. *Following the initial alternative placement of a student under this paragraph, the board shall review the alternative program or setting placement at least once per year and determine if the placement should be continued in accordance with subparagraph 1. of this paragraph.*

~~(4)(3)~~ For purposes of this subsection, "charges" means substantiated behavior that falls within the grounds for suspension or expulsion enumerated in subsection (1) of this section, including behavior committed by a student while enrolled in a private or public school, or in a school within another state. A school board may adopt a policy providing that, if a student is suspended or expelled for any reason or faces charges that may lead to suspension or expulsion but withdraws prior to a hearing from any public or private school in this or any other state, the receiving district may review the details of the charges, suspension, or expulsion and determine if the student will be admitted, and if so, what conditions may be imposed upon the admission, *which may include placement of the student into an alternative program or setting as described in subsection (3)(d) of this section.*

~~(5)(4)~~ (a) School administrators, teachers, or other school personnel may immediately remove or cause to be removed threatening or violent students from a classroom setting or from the district transportation system pending any further disciplinary action that may occur. Each board of education shall adopt a policy to assure the implementation of this section and to assure the safety of the students and staff.

(b) *Except as described in subsection (10) of this section:*

1. *A principal may establish procedures for a student's removal from and reentry to the classroom when the student's behavior disrupts the classroom environment and education process or the student challenges the authority of a supervising adult. In addition to removal, the student shall be subject to further discipline for the behavior consistent with the school's code of conduct.*
2. *A student who is removed from the same classroom three (3) times within a thirty (30) day period shall be considered chronically disruptive and may be suspended from school in accordance with this section, and no other basis for suspension shall be deemed necessary.*
3. *At any time during the school year, for a student who has been removed from the classroom under this paragraph, a principal may require a review of the classroom issues with the teacher and the parent, guardian, or other person having legal custody or control of the student and determine a course of action for the teacher and student regarding the student's continued placement in the classroom.*
4. *At any time during the school year, a principal may permanently remove a student from a classroom for the remainder of the school year if the principal determines the student's continued placement in the classroom will chronically disrupt the education process for other students.*

5. *When a student is removed from a classroom under this paragraph temporarily or permanently, the principal shall determine the placement of the student in lieu of that classroom, which may include but is not limited to:*
 - a. *Another classroom in that school; or*
 - b. *An alternative program or setting, which may be provided virtually, as approved by the superintendent.*
6. *Any permanent action by a principal under this paragraph shall be subject to an appeal process in accordance with a policy adopted by the board.*
7. *Policies compliant with this paragraph shall be included in the code of behavior and discipline adopted by the board of education under KRS 158.148 and the policies adopted by the school council under KRS 160.345.*

~~(6)(5)~~ A *student*~~[pupil]~~ shall not be suspended from the common schools until after at least the following due process procedures have been provided:

- (a) The *student*~~[pupil]~~ has been given oral or written notice of the charge or charges against him *or her* which constitute cause for suspension;
- (b) The *student*~~[pupil]~~ has been given an explanation of the evidence of the charge or charges if the *student*~~[pupil]~~ denies them; and
- (c) The *student*~~[pupil]~~ has been given an opportunity to present his *or her* own version of the facts relating to the charge or charges.

These due process procedures shall precede any suspension from the common schools unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, the due process procedures outlined above shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

~~(7)(6)~~ (a) The superintendent, principal, assistant principal, or head teacher of any school may suspend a *student*~~[pupil]~~ but shall report the action in writing immediately to the superintendent and to the parent, guardian, or other person having legal custody or control of the *student*~~[pupil]~~.

- (b) 1. The board of education of any school district may expel *or extend the expulsion of* any *student*~~[pupil]~~ for misconduct as *described*~~[defined]~~ in subsection (1) of this section, but the action shall not be taken until the parent, guardian, or other person having legal custody or control of the *student*~~[pupil]~~ has had an opportunity to have a hearing before the board. The decision of the board shall be final.
2. *Within thirty (30) days prior to the end of a student's expulsion, the board shall review the details of the expulsion and current factors and circumstances, including if ending the expulsion will substantially disrupt the education process or constitute a threat to the safety of students or school staff, to determine if the expulsion shall be extended for a period not to exceed twelve (12) months.*
3. *The expulsion review process shall be used prior to the end of each expulsion period until the board ends the expulsion or the student is no longer subject to compulsory attendance under KRS 159.010.*
4. *Each board of education shall adopt a policy for implementation of the process described in this paragraph.*

~~(8)(7)~~ (a) Suspension of exceptional children, as defined in KRS 157.200, shall be considered a change of educational placement if:

1. The child is removed for more than ten (10) consecutive days during a school year; or
2. The child is subjected to a series of removals that constitute a pattern because the removals accumulate to more than ten (10) school days during a school year and because of other factors, such as the length of each removal, the total amount of time the child is removed, and the proximity of removals to one another.

- (b) The admissions and release committee shall meet to review the placement and make a recommendation for continued placement or a change in placement and determine whether regular suspension or expulsion procedures apply. Additional evaluations shall be completed, if necessary.
 - (c) If the admissions and release committee determines that an exceptional child's behavior is related to his *or her* disability, the child shall not be suspended any further or expelled unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be terminated during a period of expulsion and during a suspension after a student is suspended for more than a total of ten (10) days during a school year. A district may seek temporary injunctive relief through the courts if the parent and the other members of the admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.
- ~~(9)(8)~~ Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.
- ~~(10)(9)~~ Any action under this section related to students with disabilities shall be in compliance with applicable federal law.
- (11) Nothing in this section shall be interpreted or construed to preclude the requirements contained in KRS 158.305 or 158.4416.*

Signed by Governor March 23, 2023.