

## CHAPTER 4

## ( SB 1 )

AN ACT relating to the delivery of education and care for children and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly finds that 902 KAR 2:213E, Childcare Standards for Covering the Face in Response to Declared National or State Public Health Emergency, was found deficient but remained effective notwithstanding the finding of deficiency pursuant to KRS 13A.330, on or after March 30, 2021, and before the effective date of this Act, as evidenced by the records of the Legislative Research Commission.*
- (2) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable as of the effective date of this Act.*
- (3) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, the administrative regulation referenced in subsection (1) of this section for a period beginning on the effective date of this Act and concluding on June 1, 2023.*
- (4) *The administrative regulation referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly finds that 702 KAR 1:195E, Face Coverings in School Facilities, was found deficient but remained effective notwithstanding the finding of deficiency pursuant to KRS 13A.330, on or after August 17, 2021, and before the effective date of this Act, as evidenced by records of the Legislative Research Commission.*
- (2) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative regulation referenced in subsection (1) of this section shall be null, void, and unenforceable five (5) working days from the effective date of this Act.*
- (3) *Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative body shall be prohibited from promulgating an administrative regulation that is identical to, or substantially the same as, the administrative regulation referenced in subsection (1) of this section for a period beginning on the effective date of this Act and concluding on June 1, 2023.*
- (4) *The administrative regulation referenced in subsection (1) of this section shall be available to the public, in the office of the Legislative Research Commission's regulations compiler.*

➔Section 3. Recognizing the significant and imminent safety concerns and challenges to operating schools during the COVID-19 pandemic, the General Assembly requires each school district to have a COVID-19 school operations plan in place as of the effective date of this Act. Each school district shall submit its COVID-19 school operations plan, and any subsequent versions, to the Kentucky Department of Education (KDE) for informational purposes and shall make the plan available on the district's website.

➔Section 4. (1) Within 14 days of the effective date of this Act, the Department for Public Health shall develop a COVID-19 "test to stay" model school plan that may be implemented by school districts, in whole or in part, to minimize the impact of quarantining non-symptomatic students and staff.

(2) The model plan shall include, as an alternative to quarantining, an on-site testing option that allows non-symptomatic students with school-related COVID-19 exposures to remain at school by testing negative for COVID-19 for a certain number of days following exposure. The model plan shall provide guidance for contact tracing and quarantining based on whether or not exposed individuals were masked, non-masked, or fully vaccinated.

(3) A school district's local health department shall provide assistance in implementing a school district's test-to-stay plan, or any other local school board-approved COVID-19 plan for masking, contact tracing, and quarantining, including the location and procurement of resources. The Department for Public Health shall provide support to the local health departments in assisting the school districts.

➔Section 5. (1) Notwithstanding any other statute or administrative regulation to the contrary, a school district may temporarily assign students at the school, grade, classroom, or student group level to remote instruction due to significant absences of students or staff related to the COVID-19 pandemic until December 31, 2021.

(2) With prior authorization from the local board of education, the decision to temporarily assign students to remote instruction shall be at the discretion of the superintendent. The temporary assignment to remote instruction shall be no longer than is necessary to alleviate student and staff absences due to COVID-19.

(3) Remote instruction may be provided to a particular school, grade, classroom, or group of students up to 20 days under this section. No school district shall utilize remote instruction under this section for more than 20 days. A school district shall not temporarily assign every student in the district to remote instruction under this section, unless all students in the school district are located in a single school facility.

(4) Students temporarily assigned to remote instruction shall receive at least the minimum daily instruction required pursuant to KRS 158.060, which shall include the content standards as provided in the Kentucky Academic Standards.

(5) Remote instruction provided under this section shall not be counted against student attendance days authorized under a school district's approved nontraditional instruction plan.

➔Section 6. (1) Notwithstanding any statute or administrative regulation to the contrary, for school year 2021-2022, school districts may, when submitting the Superintendent's Annual Attendance Report, substitute attendance data for school year 2018-2019 or for school year 2019-2020 for attendance data for school year 2021-2022. The selected data shall be utilized to calculate the average daily attendance that will be used in calculating Support Education Excellence in Kentucky (SEEK) funds and any other state funding based in whole or in part on average daily attendance for the district.

(2) Current year data shall be used for property assessments per KRS 160.470(5), district tax rates levied, equivalent tax rates based on tax levies, exceptional and limited English proficiency student counts, and state equalization.

(3) For school year 2021-2022, each school district shall continue to enforce compulsory attendance requirements set forth in KRS Chapter 159 and report student attendance in the statewide student information system as required by state statute and administrative regulation.

(4) It is the intent of the General Assembly to enact legislation in the 2022 General Session to address the adjustment of SEEK calculations related to attendance growth over prior school years.

➔Section 7. When a school district utilizes a student attendance day under an approved nontraditional instruction plan due to COVID-19, or utilizes remote instruction under Section 5 of this Act, all certified staff and any classified staff designated by the district shall be required to perform work duties on-site during the student attendance day, except for employees quarantined due to COVID-19 who the district determines can fulfill their job duties remotely.

➔Section 8. (1) Notwithstanding the requirements of KRS 161.100, 16 KAR 2:030, and any other statute or administrative regulation to the contrary, for the 2021-2022 school year, a local school district may employ individuals to serve as short- or long-term substitute teachers under the requirements of this subsection. An individual must comply with the background checks required under subsection (5) of this section and have:

(a) At least 64 hours of college credit; or

(b) A high school diploma or equivalent and 4 years of occupational experience related to education, childcare, or the subject area to be taught.

An individual hired under this subsection must apply for the one-year emergency substitute certification from the Education Professional Standards Board, and a school district may employ the individual prior to the receipt of the certificate if all other requirements of this subsection are met.

(2) For the 2021-2022 school year, a local school district may fill certified positions notwithstanding the vacancy process requirements contained in KRS 160.380(2)(b), (c), and (d).

(3) Notwithstanding any other statute or administrative regulation to the contrary, for the 2021-2022 school year, classified staff employed by the school district as of the effective date of this Act may perform classroom instructional activities without direct supervision by certified staff.

(4) Notwithstanding the requirement that instruction be provided by a certified teacher in KRS 158.033 and any other statute or administrative regulation to the contrary, for the 2021-2022 school year, home or hospital instruction may be provided by classified staff employed by the school district as of the effective date of this Act.

(5) For the 2021-2022 school year, compliance background checks under KRS 160.380 are required, except, notwithstanding KRS 160.380(7)(a), a superintendent may employ all individuals on probationary status upon receiving a preliminary background check conducted by the Administrative Office of the Courts, provided the background checks required under KRS 160.380 have been requested by the date the probationary employment begins.

(6) The Department of Kentucky State Police and the Cabinet for Health and Family Services shall prioritize the completion of school district employee application background checks under KRS 160.380 for the 2021-2022 school year.

(7) Nothing in this section shall be interpreted to waive any requirements of the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. or any other federal act.

➔Section 9. (1) Notwithstanding any provision of KRS 161.605 or 161.612 to the contrary, for the time period occurring on or after the effective date of this Act and until January 15, 2022, the following shall apply to retirees who retired from the Teachers' Retirement System on or before August 1, 2021, and who subsequently return to employment for a local board of education in a full-time or part-time teaching position, or in a position providing substitute teaching services:

(a) The separation of service required shall be a bona fide separation of at least one month for retirees returning to work in a full-time, part-time, or substitute teaching position with a local board of education. The system shall not be able to extend the break in employment as provided by this paragraph unless an extension is needed due to a conflict with federal law as described in subsection (4) of this section;

(b) The critical shortage program limitations on the number of retired teachers reemployed under the program by a local school district as provided by KRS 161.605(8)(a) shall be increased to a maximum number of 10 percent of the total active members employed by the local school district on a full-time basis as defined under KRS 161.220(21); and

(c) Other than the temporary adjustments provided in this subsection, all other provisions of KRS 161.220 to 161.716 and 161.990 shall apply.

(2) The provisions of subsection (1) of this section shall expire on January 15, 2022. Upon expiration of these temporary provisions, any future reemployment or ongoing reemployment of retirees subject to the provisions of subsection (1) of this section shall, for such future or ongoing reemployment occurring after January 15, 2022, be subject to KRS 161.605, including the existing limitations on the critical shortage program, except that a retiree who is reemployed according to the provisions of subsection (1) of this section shall not be required to observe any additional separation of service beyond the one month specified by subsection (1)(a) of this section if he or she remains employed or is reemployed on or after January 15, 2022.

(3) Additional costs incurred to school districts under this section for the hiring of critical shortage teachers to meet the educational challenges of the COVID-19 pandemic are deemed a qualified expense by the General Assembly for purposes of utilizing federal pandemic funds and shall be authorized for use by school districts for this purpose unless in conflict with federal law.

(4) Any provision of subsection (1) and (2) of this section in conflict with federal law as determined by the system shall be void. The school districts shall be notified of any provision in conflict that is voided.

➔Section 10. (1) Notwithstanding any provision of KRS 61.637 or 78.5540 to the contrary, for the time period occurring on or after the effective date of this Act and until January 15, 2022, the following shall apply to retirees who retired from the systems on or before August 1, 2021, and who subsequently return to employment for a local board of education in a full-time or part-time classified position, or in a position providing substitute classified services:

(a) The separation of service required shall be a bona fide separation of at least one month for retirees returning to work in a full-time, substitute, or part-time classified position with a local board of education. The systems shall not be able to extend the break in employment as provided by this paragraph unless an extension is needed due to a conflict with federal law as described in subsection (3) of this section; and

(b) Other than the temporary adjustments provided in this subsection, all other provisions of KRS 61.510 to 61.705 and 78.510 to 78.852 shall apply.

(2) The provisions of subsection (1) of this section shall expire on January 15, 2022. Upon expiration of these temporary provisions, any future reemployment or ongoing reemployment of retirees hired under the provisions of subsection (1) of this section shall, for such future or ongoing reemployment occurring after January 15, 2022, be subject to KRS 61.637 or 78.5540, as applicable, except that a retiree who is reemployed according to the provisions of subsection (1) of this section shall not be required to observe any additional separation of service beyond the one month specified by subsection (1)(a) of this section if he or she remains employed or is reemployed on or after January 15, 2022.

(3) Any provision of this section in conflict with federal law as determined by the systems shall be void. The school districts shall be notified of any provision in conflict that is voided.

➔Section 11. (1) For the 2021-2022 school year, a school district may revise its school calendar under the requirements of this section.

(2) For purposes of this section, notwithstanding the requirement in KRS 158.070 that the student instructional year include 170 student attendance days and any other statute or administrative regulation to the contrary, students shall receive a minimum of 1,062 instructional hours, less any waiver of instructional time provided in accordance with KRS 158.070(3)(f) and 702 KAR 7:140.

(3) A school district may reach 1,062 instructional hours by adding time to the day. A day shall not exceed seven hours of instructional time, unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar. A school district shall not schedule any instructional days on Saturdays. A school district may schedule graduation ceremonies before the final instructional day.

(4) Notwithstanding any other statute or administrative regulation to the contrary, school district certified and classified personnel shall complete all contract days by participating in instructional activities or professional development or by being assigned additional work responsibilities.

(5) If a local board of education seeks to revise its school calendar under this section, the board shall submit a plan to the Kentucky Department of Education (KDE) demonstrating how 1,062 instructional hours will be completed for approval.

(6) KDE shall make a report to the Interim Joint Committee on Education by November 1, 2022, on how school districts with revised school calendars under this section completed the 1,062 hours.

➔Section 12. Whereas the Commonwealth's citizens, students, and children continue to face significant challenges due to the COVID-19 public health crisis, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Veto overridden September 9, 2021.**