

The 2023 General Assembly adjourned March 30. The following education-related bills contained emergency clauses impacting one or more sections of each bill, which means at least part or all of the bill became effective upon signature by the governor or veto override by the General Assembly.

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## House Bills

### [HB 5](#)

HB 5 provides tax relief to distilling manufacturers for distilled spirits aging in Kentucky warehouses. The measure phases out the ad valorem tax on distilled spirits beginning in 2026, until completely phased out in 2043. The phased-out tax will impact school districts with spirits aging in their district. To offset any revenue loss, the law creates a new section of KRS Chapter 138 that provides an industry replacement tax for school districts to be assessed by the Kentucky Department of Revenue. Additionally, it creates a new section of KRS 157.310 to 157.440 that modifies the Support Educational Excellence in Kentucky (SEEK) funding formula to exclude the assessed value of distilled spirits in the local effort calculation. Any questions regarding impact to districts should be directed to [Krystal Smith](#). The Kentucky Department of Education (KDE) expects to release additional information regarding the impact and implementation of HB 5 as information becomes available.

### [HB 32](#)

A school district may employ classified personnel without a high school diploma or high school equivalency diploma if the district provides the employee the opportunity to obtain a high school equivalency diploma at no cost to the employee. Licenses or credentials issued by a governmental entity that require specialized skill or training may substitute for a high school diploma or equivalent. As an example, a district could employ an individual without a high school diploma or equivalent as a school bus driver if the employee possessed a Commercial Driver's License with the required endorsements to operate a school bus. In this case, the school bus driver possesses a license that requires specialized skill and training issued by a governmental entity.

Districts that receive Title I funds must continue to adhere to the Every Student Succeeds Act's (ESSA's) requirements for the employment of paraprofessionals. More information regarding ESSA's paraprofessional requirements can be found on KDE's [Paraeducator Requirements in Title I Schools](#) webpage. Importantly, paraprofessionals working in a program supported with Title I, Part A funds must continue to have a high school diploma or GED.

### [HB 153](#)

HB 153 prohibits any law enforcement agency or officer, as well as any public agency or official, from enforcing, assisting or cooperating in the enforcement of a federal firearms ban enacted on or after Jan. 1, 2021. The legislation also prohibits a public agency from adopting a policy to enforce, assist or cooperate with a federal firearms ban enacted on or after Jan. 1, 2021.

[KRS 527.070](#) is state law that prohibits the possession of a firearm, either open or concealed, on any school campus, bus, athletic field or other property owned or used by a public educational institution. Furthermore, the Gun Free Schools Act contained in Sec. 8561 of the [Elementary and Secondary Education Act of 1965](#), as amended by the Every Student Succeeds Act of 2015, requires that states have laws in place requiring expulsion for not less than one year if a student brings a firearm to school, and allowing school officials to modify the expulsion requirement in writing. This federal requirement was in place prior to Jan. 1, 2021.

As such, school districts should continue to prohibit firearms on all district property, including school campuses. School districts should continue posting all signage required by KRS 527.070 and board policies, providing notice to students, staff and visitors that both open and concealed firearms are prohibited on school property.

### [HB 553](#)

HB 553 provides a mechanism for “growth districts” to receive additional funding. The calculation compares the 2nd month growth factor collected in the [2018-2019 or 2019-2020](#) school years, dependent upon the school district’s choice of Adjusted Average Daily Attendance (AADA), and the 2022-2023 2nd month growth factor. Additionally, the bill provides that KDE “shall recalculate the exact final amount” for each district’s fiscal year [2022-2023 Final SEEK](#). Payments for districts that receive growth using this calculation will be included in the district’s May and June SEEK payments. On April 12, 2023, KDE distributed information to superintendents regarding these changes, including the specific amount of SEEK payment increases for impacted districts. Questions should be directed to [Krystal Smith](#).

## Senate Bills

### [SB 5](#)

SB 5 (2023) creates a new section of KRS Chapter 158 to define "harmful to minors;" requires local boards of education to adopt a complaint resolution policy to address parent complaints about materials that are harmful to minors; and requires the school to ensure that a student whose parent has filed a complaint does not have access to the material.

As used in Section 1, “harmful to minors” means materials, programs or events that:

- Contain the exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks or the female breast, or visual depictions of sexual acts or simulations of sexual acts, or explicit written descriptions of sexual acts;
- Taken as a whole, appeal to the prurient interest in sex; or
- Is patently offensive to prevailing standards regarding what is suitable for minors.

SB 5 requires the Kentucky Department of Education (KDE) to establish a model complaint resolution policy. KDE worked in collaboration with the Kentucky School Boards Association (KSBA) to establish this [model policy](#), as well as [school district procedures](#) for implementing SB 5. Please view the [SB 5 supplemental guidance document](#) for detailed requirements for the complaint resolution policy. KSBA will include the model policy and procedure in its policy updates to school districts subscribed to the KSBA policy service.

For questions regarding SB 5 (2023), please contact Office of Teaching and Learning Chief Academic Officer [Micki Ray](#).

### [SB 7](#)

SB 7 prohibits public employers from performing payroll deductions for the benefit of certain organizations. The bill provides:

*A public employer shall not deduct from the wages, earnings, or compensation of any public employee for: (1) Any dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization; or (2) Political activities.*

The bill defines “labor organization” as “any organization of any kind, or any agency or employee representation committee, association or union which exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of employment or conditions of work, or other forms of compensation.” Except in certain circumstances, “‘labor organization’ shall not include organizations which primarily represent public employees working in the protective vocations of active law enforcement officer, jail and corrections officer, or active fire suppression or prevention personnel.”

SB 7 defines “political activities” as “any contribution or independent expenditure made: (a) To any committee; (b) To any contributing organization; (c) To any candidate; (d) To any slate of candidates; (e) To any fundraiser; (f) For any electioneering communications; (g) For any testimonial affair; (h) In any manner intended to influence the outcome of any election; (i) In any manner intended to otherwise promote or support the defeat of any: 1. Candidate; 2. Slate of candidates; or 3. Ballot measure; or (j) In any manner intended to advance any position held by any person or entity other than the public employee regarding any: 1. Election; 2. Candidate; 3. Slate of candidates; or 4. Ballot measure.” The legislation defines a “contributing organization” as “a group which merely contributes to candidates, slates of candidates, campaign committees, caucus campaign committees, or executive committees from time to time from funds derived solely from within the group, and which does not solicit or receive funds from sources outside the group itself.”

School districts are already receiving requests from various membership groups to continue payroll deduction for member employees. School districts must determine for each organization requesting payroll deduction whether the organization is: (1) a “labor organization;” or (2) engaged in “political activities.”

If the organization exists in whole or in part for the purpose of dealing with employers (i.e. school districts) concerning wages, rates of pay, hours of employment or conditions of work, or other forms of compensation, then payroll deduction for the organization is no longer permitted under SB 7. Likewise, if the organization is engaged in “political activities,” including acting as a “contributing organization,” payroll deduction is no longer permitted under SB 7. Whether or not organizations meet these definitions must be determined on a case-by-case basis by the employer school district. The school district is in the best position to gather relevant facts from entities seeking payroll deduction and to make a determination as to whether payroll deduction is permitted under SB 7.

KDE recommends that school districts develop an assurance document to be completed by any organization seeking payroll deduction that requires the organization to answer specific questions and certify that it is not a “labor organization” or engaged in “political activities” as defined in SB 7. [SB 25](#)

SB 25 relates to postsecondary readiness indicators for demonstrating career readiness. This bill provided clean-up language to clarify that earning a minimum of three (3) hours of dual credit or a minimum of three (3) hours of postsecondary articulated credit can be achieved by:

- a. Successfully completing a career and technical education (CTE) or general education dual credit course which is equivalent to a minimum of three (3) hours of college credit; or
- b. Passing a [CTE End-of-Program Assessment](#) associated with an articulation agreement.

This bill also added language to the Work-Based Learning (WBL) indicator for postsecondary readiness to indicate that apprenticeships, cooperatives and internships *are not limited* to being offered as a high school course or during the regular school day, week or year. WBL experiences for students must still be aligned with a credential or associate degree and be approved by the Kentucky Board of Education (KBE) after receiving input from the Local Superintendents Advisory Council (LSAC) to qualify for postsecondary readiness.

The passage of SB 25 means that the following are methods to demonstrate postsecondary readiness through the WBL indicator:

- a. Completing a [Kentucky Department of Education \(KDE\) approved or labor cabinet-approved apprenticeship](#); or

- b. Successfully completing a KBE-approved cooperative or internship that is aligned with a credential or associate degree and which provides a minimum of 300 hours of on-the-job work experience.

The KDE Office of Career and Technical Education (OCTE) has developed a data collection system for hours of on-the-job work experience associated with cooperative and internship courses within Infinite Campus (IC). The WBL tab in IC will be available in May.

The KBE and the KDE are working to establish minimum criteria for approval of a cooperative or internship that is not offered as a high school course. Further guidance will be provided to districts once the Local Superintendents Advisory Council (LSAC) has provided input and an approval process has been established.

Available data submitted by July 31 each year may be used in that year's fall accountability reporting.

#### [SB 49](#)

Senate Bill 49 was signed by Gov. Andy Beshear on March 22, 2023. The bill contains an emergency clause, and therefore became effective upon the governor's signature. Section 1 of the bill amends KRS 161.048 to allow the one-year temporary provisional certificate issued to a teacher candidate in the Option 6 or Option 7 alternative route to be renewed up to four (4) times. Previously, the statute only allowed the temporary provisional certificate to be renewed a maximum of two (2) times.

At its April 10, 2023, meeting, the Education Professional Standards Board approved amendments to the Option 6 [16 KAR 9:080] and Option 7 [16 KAR 9:100] regulations to allow a candidate in these routes renew the one-year temporary provisional certificate four times unless the candidate is pursuing teacher certification for exceptional children or interdisciplinary early childhood education. Federal regulation related to the Individuals with Disabilities Education Act [34 C.F.R. § 300.156 (c)(2)(i)(C)] provides that those teaching under alternative certifications can only assume functions as a special education teacher for a maximum of three years. To comply with the federal law, those candidates pursuing certification to teach exceptional children or interdisciplinary early childhood education through the Option 6 or Option 7 route will only be eligible for two (2) renewals of the one-year temporary provisional certificate.

SB 49 also authorizes any person receiving emergency certification during the 2022-2023 school year to renew that certification for the 2023-2024 school year. Additionally, at the April 10, 2023, meeting, the Education Professional Standards Board waived the requirements of 16 KAR

2:120, Section 2(3)(b)-(c) to allow reissuance of emergency certification for the 2023-2024 school year. This waiver will allow anyone that has previously been issued an emergency teaching certificate to be issued another emergency teaching certificate for the 2023-2024 school year unless KRS 161.120(1) applies.

### [SB 107](#)

SB 107 subjects the commissioner of education to Senate confirmation upon appointment or reappointment, limits each term to four years, and prohibits ex officio and non-voting members to be represented by proxy at any meeting of the Kentucky Board of Education.

### [SB 150](#)

#### *Section One*

Section 1 of SB 150 creates a new section of KRS Chapter 158 aimed at providing notice to parents of certain health services and mental health services offered by a school. If schools or districts provide health services or mental health services related to human sexuality, contraception or family planning, districts should provide comprehensive notice of those health services and mental health services available to students upon enrollment and at the beginning of each school year, allowing parents or guardians to opt out of those specific services. These notification requirements *do not* apply to those health services and mental health services unrelated to human sexuality, contraception and family planning. Additionally, schools should develop and implement procedures for notifying families of *referrals* for *any* health services or mental health services, regardless of whether they are related to human sexuality, contraception or family planning. SB 150 does not impact a school district's ability to seek or provide emergency medical or mental health services for a student.

This section also provides that, "A district or school shall not adopt policies or procedures with the intent of keeping any student information confidential from parents." As school leaders know, this creates some confusion regarding student privacy required by the Family Educational Rights and Privacy Act (FERPA). Despite this provision in SB 150, districts are reminded of their obligations under FERPA. The definition of "parent" in SB 150 is not the same as the definition of "parent" in FERPA at 34 CFR 99.3. Furthermore, "[w]hen a student becomes an eligible student, the rights accorded to, and consent required of, parents under [FERPA] transfer from the parents to the student." 34 CFR 99.5(a)(1). Exceptions to this rule exist for students who are considered "dependent" as defined in section 152 of the Internal Revenue Code, allowing school districts to share information and records with parents or guardians of dependent students, even after they reach the age of 18. However, not every student over 18 is considered "dependent" as defined by the Internal Revenue Code. School districts must have FERPA policies in place to protect the rights of these eligible students.

The U.S. Department of Education published [An Eligible Student Guide to the Family Educational Rights and Privacy Act \(FERPA\)](#), which may be a helpful resource. To the extent there is any conflict between SB 150 and FERPA, districts should comply with FERPA, SB 150 notwithstanding. It should be noted that SB 150 provides that school districts may withhold information from a parent or guardian, “if a reasonably prudent person would believe, based on previous conduct and history, that the disclosure would result in the child becoming a dependent child or an abused or neglected child as defined in KRS 600.020.”

KDE is no longer able to provide guidance to schools or districts related to the use of requested pronouns as a result of the General Assembly’s passage of SB 150. School districts should remain aware of the legal landscape applicable to transgender students, including current and [proposed Title IX regulations](#). The United States Court of Appeals for the Sixth Circuit previously held: “Under settled law in this Circuit [which includes Kentucky], gender nonconformity as defined in *Smith v. City of Salem*, is an individual’s ‘fail[ure] to act and/or identify with his or her gender ... . Sex stereotyping based on a person’s gender non- conforming behavior is impermissible discrimination.” *Dodds v. United States Department of Education*, 845 F.3d 217, 221 (2016). Districts should consult with board counsel for legal advice regarding usage of requested pronouns and potential liability concerns.

### *Section Two*

Section two of SB 150 amends KRS 158.1415 regarding instruction in courses and programs.

The first subsection of KRS 158.1415 provides certain conditions that must be met, “if a school council or, if none exists, the principal adopts a curriculum for human sexuality or sexually transmitted diseases[.]” First, it is important to note that as a result of [SB 1 from the 2022 legislative session](#), neither school councils nor principals adopt curriculum. Curriculum adoption is now determined by the superintendent. Nevertheless, *if* a curriculum for human sexuality or sexually transmitted diseases has been adopted for a school, instruction in those courses and programs implementing the curriculum should include the following:

- “Abstinence from sexual activity is the desirable goal for all school-age children;
- Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems;
- The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship;
- *A policy to respect parental rights by ensuring that:*
  - *Children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases; or*
  - *Any child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual*

*orientation; and*

- *A policy to notify a parent in advance and obtain the parent’s written consent before the parent’s child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases authorized in this section.”*

The requirements in italicized font are *new* requirements of SB 150. The first three bullet point requirements above appeared in KRS 158.1415 prior to SB 150 and should not require any new action by school districts. The two new policy requirements do not specify whether these policies are to be adopted by the local board of education, the superintendent or the school council. In any event, they are only required *if* a curriculum for human sexuality or sexually transmitted diseases has been adopted for the school. If no such curriculum has been adopted, then the policies are not necessary. If a curriculum for human sexuality or sexually transmitted diseases *has* been adopted, SB 150 requires that districts adopt a parental notice and consent policy if a, “child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases.” SB 150 also presents districts with a choice. That is, if a curriculum for human sexuality or sexually transmitted diseases has been adopted for a school, the school district must determine whether its policy will require that: (1) “Children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases; or [2] Any child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation.”<sup>1</sup>

For example, if a K-8 school has a curriculum for human sexuality or sexually transmitted diseases, and the school district chose a policy pursuant to SB 150 that, “children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases,” then only students in grades 6-8 within the school should receive instruction on the curriculum for human sexuality or sexually transmitted diseases. Furthermore, the school district should provide notice to parents and guardians, “in advance and obtain the parent’s written consent before the parent’s child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases.” Under this scenario, instruction on curriculum for human sexuality or sexually transmitted diseases at the high school level would not be impacted. However, the school district would have to meet the parental notice and consent requirements prior to high school students receiving any instruction on the curriculum for human sexuality or sexually transmitted diseases.

If school districts choose a policy pursuant to SB 150 that, “children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases,” they should be aware that the following grade 5 health standard does not align with such a policy and should not be included in curriculum or instruction at grade 5 or below:

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<sup>1</sup> By utilizing the conjunction “or” SB 150 requires one of these two policies, but not both.

- 5.1.6. *Describe basic male and female reproductive body parts and their functions as well as the physical, social and emotional changes that occur during puberty.*

KDE will begin standards review for Health and Physical Education, but until revised standards are approved and effective in law, the grade 5 health standard above should be omitted from local curriculum and instruction at grade 5 and below if a school district chooses a policy pursuant to SB 150 that, “children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases.”

If school districts choose a policy pursuant to SB 150 that, “[a]ny child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation,” instruction through curriculum or programs on human sexuality or sexually transmitted diseases at all grade levels will be impacted. Furthermore, this policy impacts not only instruction, but also “presentations.” If this policy is selected by districts, they should review current courses, programming, instructional resources and learning experiences to ensure compliance including, but not limited to, health education curriculum, Advanced Placement coursework, dual credit courses and extracurricular activities. Some of these learning experiences may need to be altered or discontinued to comply with the district’s selected policy.

For example, if the school district chose a policy pursuant to SB 150 that, “[a]ny child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation,” then schools at any grade level can implement instruction for a curriculum on human sexuality or sexually transmitted diseases. However, the instruction on this curriculum should not include any instruction or presentation on gender identity, gender expression, or sexual orientation, regardless of grade level. Of course, it is difficult to understand how high schools would provide instruction on human sexuality or sexually transmitted diseases, without some presentation on sexual orientation, which includes heterosexual individuals. Furthermore, the school district would have to provide notice to parents and guardians, “in advance and obtain the parent’s written consent before the parent’s child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases.”

Regardless of the policies a district selects, SB 150 does not prohibit school personnel from, “discussing human sexuality, including the sexuality of any historic person, group, or public figure, where the discussion provides necessary context in relation to a topic of instruction from [an approved curriculum.]” Furthermore, school district personnel are not prohibited from, “responding to a question from a student during class regarding human sexuality as it relates to topics of instruction from [an approved curriculum.]”

School districts should work closely with instructional leaders and their board counsel when determining whether its policy will require that: (1) “Children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually

transmitted diseases; **or** [2] Any child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation.”

Finally, Section 2 of SB 150 provides details regarding the notice that parents and guardians must receive. For any course, curriculum or program on the subject of human sexuality provided by school personnel or by third parties, the school district must, “provide an alternative course curriculum, or program without any penalty to the student’s grade or standing,” for those students in grade 6 or above whose parents do not consent to instruction through curriculum or programs on human sexuality or sexually transmitted diseases. Notice that this alternative course need only be offered if parents refuse consent for courses, curriculum or programs on the subject of human sexuality. No similar requirement exists for students whose parents or guardians object to instruction on sexually transmitted diseases.

Furthermore, for courses, curricula or programs on the subject of human sexuality provided by school personnel or by third parties, parents must be permitted to inspect curriculum, instructional materials, lesson plans, assessments or tests, surveys or questionnaires, assignments and instructional activities. Written notice shall be provided to parents/guardians at least two (2) weeks prior to the student’s participation in the course, curriculum or program on the subject of human sexuality and notify parents of the following: (1) the availability of an alternative course curriculum or program without any penalty to grade or standing for students grade 6 and above; (2) the materials that are available to parents for inspection as well as the process on how to review the materials; (3) that the course, curriculum or program must be developmentally appropriate; (4) that the course, curriculum or program is limited to curriculum approved pursuant to KRS 160.345(2); (5) the date of the course, curriculum or program; (6) the process for a parent to provide written consent for participation; and (6) the contact information for the teacher of the course, curriculum or program, as well as the supervising school administrator. School districts should consider a standardized form that can be utilized to ensure these notice requirements are satisfied.

For questions regarding Section 2 of SB 150 (2023), please contact Office of Teaching and Learning Chief Academic Officer [Micki Ray](#).

### *Section Three*

This section requires local boards of education to adopt policies to “not allow students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex” after allowing public comment on the issue at an open meeting. School districts are required to provide “the best available accommodation” to students who assert that their gender is different from their biological sex and whose parent or guardian provides written consent. This section provides that the “accommodation shall not include the use of school restrooms, locker rooms, or shower rooms designated for use by students of the opposite biological sex while students of the opposite biological sex are present or could be present.”

Again, school districts should remain aware of the legal landscape applicable to transgender students, including current and [proposed Title IX regulations](#). The United States Court of Appeals for the Sixth Circuit previously held: “Under settled law in this Circuit [which includes Kentucky], gender nonconformity as defined in *Smith v. City of Salem*, is an individual’s ‘fail[ure] to act and/or identify with his or her gender ... . Sex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination.” *Dodds v. United States Department of Education*, 845 F.3d 217, 221 (2016). Districts should consult with board counsel for legal advice regarding the policies required by SB 150 and potential liability concerns.