

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:120. Appeals and hearings.

RELATES TO: KRS Chapter 13B, 156.808, 156.820, 156.832, 344.030

STATUTORY AUTHORITY: KRS 156.070, 156.808(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(s)~~[156.808(8)]~~ requires the Kentucky Board of Education~~[Executive Director of the Office of Career and Technical Education]~~ to promulgate administrative regulations governing employee appeals, for all full-time and part-time certified or equivalent employees of the Office of Career and Technical Education. KRS 156.808(6)(a) requires the Kentucky Board of Education to promulgate administrative regulations to govern proceedings which provide for procedures to be utilized by the Kentucky Technical Education Personnel Board in the conduct of hearings. KRS 156.808(8) requires the Kentucky Board of Education to promulgate administrative regulations for certified and equivalent employees of the Office of Career and Technical Education that have been dismissed, demoted, suspended, or otherwise penalized for cause. This administrative regulation establishes the requirements for appeals and hearings ~~[requirements]~~ for certified and equivalent employees of the Office of Career and Technical Education.

Section 1. Definitions.

- (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).
- (2) "Qualified individual with a disability" is defined by KRS 344.030(1).
- (3) "Reasonable accommodation" is defined by KRS 344.030(6).
- (4) "Religion" is defined by KRS 344.030(7).
- (5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be founded ~~in~~~~[based on]~~ the terms defined in Section 1 of this administrative regulation.

Section 3. General Provisions.

- (1) To file an appeal, an employee shall file a completed Appeal Form and, if applicable, other documents relating to the appeal, ~~[with the Kentucky Technical Education Personnel Board]~~ through the office of the ombudsman of the Office of Career and Technical Education.
- (2)
 - (a) An appeal or document relating to an appeal shall be filed within thirty (30) calendar days after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence.
 - (b) If the 30th day of the filing period falls on a day the Office of Career and Technical Education is closed during normal working hours, the appeal may be filed on the next regular working day.
- (3)
 - (a) An appeal shall be heard in Frankfort, Kentucky or in a location mutually acceptable to the parties and approved by the hearing officer~~[and the employee]~~.
 - (b) The hearing officer shall make the final determination of the location of the hearing.
- (4) If the appeal form indicates that the employee has retained counsel upon filing an appeal, notice of the scheduled hearing and all future notices, correspondence, or orders

regarding the appeal shall be transmitted to that attorney, and all filings or motions on behalf of the employee shall be submitted by that attorney.

(5)

(a) Unless otherwise directed by the board, the ombudsman of the Office of Career and Technical Education shall assign a hearing officer or officers to an appeal.

(b) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief.

(c) If the appeal is to be heard by the full board, the chairman of the board shall serve as the chief hearing officer.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal.

Section 4. Continuances.

(1) Except as provided by subsection (5) of this section, a party ~~may~~shall request a continuance of a scheduled hearing for good cause by following the procedures established in subsections (2) and (3) of this section.

(2) A request for continuance shall:

(a) Be written;

(b) State the reason for the request;

(c) Include proposed dates for rescheduling the hearing;

(d) Be filed with the board; and

(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) An objection to a request for a continuance shall:

(a) Be written;

(b) State the reason for the objection to the request for continuance;

(c) Be filed with the board; and

(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

(4) A continuance may be granted in extraordinary circumstances by the hearing officer.

(5) A request for a continuance based on a personal emergency shall be granted upon appropriate justification.

(6)

(a) At the direction of the hearing officer, the ombudsman of the Office of Career and Technical Education shall execute and transmit to all parties an interim order either granting or denying the continuance.

(b) If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or the hearing has been continued generally.

Section 5. Prehearing Procedures.

(1) A motion, request, or filing shall:

(a) Be in writing;

(b) Be filed with the board through the office of the ombudsman of the Office of Career and Technical Education; and

(c) Be served on all other parties.

(2)

(a) An interim order by the hearing officer shall be executed and transmitted by the board through the ombudsman of the Office of Career and Technical Education to all parties.

(b) Unless an interim order provides for review by the board prior to the conclusion of a hearing, the board shall review an interim order simultaneously as it considers the recommended order, record, or exceptions.

(3)

(a) If an employee retains counsel subsequent to filing an appeal, the attorney shall file a written entry of appearance.

- (b) All future notices, correspondence, or orders regarding the appeal shall be transmitted to that attorney, and all future filings or motions on behalf of the employee shall be submitted by that attorney.
- (4) An employee shall notify all parties and the board in writing of a change of address or a change in counsel.
- (5)
- ~~[(a)] Discovery may be taken in accordance with KRS 13B.080. [A deposition may be taken only in an extraordinary circumstance and upon authorization by the hearing officer.]~~
- ~~[(b)] [A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing.]~~
- ~~[(c)] [An objection to the request shall be filed prior to the scheduled hearing.]~~
- (6)
- (a) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals that involve the same or similar facts may be consolidated.
- (b) Upon motion of a party or upon the hearing officer's motion, the hearing officer may join other parties as necessary to appropriately consider the matter.
- (7) An agreed settlement shall be submitted in writing for the full board's review and final action.
- (8) The ombudsman of the Office of Career and Technical Education, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:
- (a) Procedural questions; or
- (b) Scheduling of hearings.

Section 6. Conduct of Hearing.

- (1) The hearing shall be conducted pursuant to:
- (a) KRS Chapter 13B; and
- (b) This administrative regulation.
- (2) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.
- (3)
- (a) A party shall provide three (3) copies of an exhibit that is to be introduced as evidence.
- (b) Copies shall be prepared prior to the hearing unless otherwise authorized by the hearing officer.

Section 7. Board Review and Action.

- (1) Written exceptions, and responses thereto, ~~[A response to a written exception]~~ to a recommended order shall be filed in accordance with KRS 13B.110(4). A response shall be:
- (a) In writing; and
- (b) Served on all parties.
- (2) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.
- (3) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:
- (a) In writing;
- (b) Filed with the board within fifteen (15) days of issuance of a recommended order; and
- (c) Served on all parties.
- (4) The board shall issue a final order in accordance with KRS 13B.120.
- (5)

(a) Following consideration by the full board, a final order shall be entered disposing of the appeal.

(b) The order shall be prepared, executed, and entered at the direction of the board by the ombudsman of the Office of Career and Technical Education.

~~{Section 8.} {Incorporation by Reference.}~~

~~{(1)} {"Appeal Form", August 2006, is incorporated by reference.}~~

~~{(2)} [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Career and Technical Education, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

ROBIN FIELDS KINNEY, Interim Commissioner of Education

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements for appeals and hearings for certified and equivalent employees of the Office of Career and Technical Education.

(b) The necessity of this administrative regulation:

KRS 156.808 requires the Kentucky Board of Education to promulgate administrative regulations governing appeals for all full-time and part-time, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation provides specific details in regard to the requirements for appeals for all full-time and part-time, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation provides details the Kentucky Board of Education has established for policies and procedures for the appeals system.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment will update the existing regulation to conform to the statutes and will clarify the specific governing body over policies and procedures relating to the appeals system for certified and equivalent employees of the Office of Career and Technical Education.

(b) The necessity of the amendment to this administrative regulation:

KRS 156.808 requires the Kentucky Board of Education to promulgate administrative regulations relating to the appeals system. KRS 156.820 provides the appeals process for all certified and equivalent employees in the Office of Career and Technical Education.

(c) How the amendment conforms to the content of the authorizing statutes:

This administrative regulation amendment provides specific details in relation to the policies and procedures regarding the appeals process for certified and equivalent employees.

(d) How the amendment will assist in the effective administration of the statutes:

This administrative regulation amendment aligns specific language from the statutes to the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

All full-time and part-time, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There will be no additional action needed from the Office of Career and Technical Education or any of its certified and equivalent employees. The regulation contains procedures in the event of discipline or penalization of a certified or equivalent employee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No additional cost is anticipated as a result of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulation provides due process procedures for certified and equivalent employees subject to discipline or penalization.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

This amendment regarding the appeals process will require no additional cost to the Kentucky Department of Education.

(b) On a continuing basis:

The Office of Career and Technical Education is required by state legislation and is implemented using state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State generated funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increased fees or funding is anticipated as a result of this regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This amendment does not establish or increase fees.

(9) TIERING: Is tiering applied?

Tiering is not appropriate in this administrative regulation because the administration regulation applies equally to all certified and equivalent employees of the Office of Career and Technical Education.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 156.070, 156.808, KRS 156.820, KRS 344.030

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Department of Education

(a) Estimate the following for the first year:

Expenditures:\$0.00

Revenues:\$0.00

Cost Savings:\$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures:\$0.00

Revenues:\$0.00

Cost Savings:\$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3):

The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures:\$0.00

Revenues:\$0.00

Cost Savings:\$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact:

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion:

The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.