

STATEMENT OF EMERGENCY

16 KAR 1:030E.

This emergency administrative regulation is being promulgated to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2024 legislative session, the General Assembly passed House Bill 300 and the Governor signed it into law on April 18, 2024. This legislation, which is slated to become effective on July 15, 2024, amends the process by which the Education Professional Standards Board (EPSB) handles complaints against certificate holders under KRS 161.120. As there are only eighty-eight (88) days between the Governor signing this bill into law and its effective date, the ordinary administrative regulation process would not allow the EPSB time to promulgate an ordinary administrative regulation to be effective when the bill goes into effect. Therefore, the emergency regulation is necessary to comply with the process for handling complaints against certificate holders when the bill goes into effect. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the process is expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

JUSTIN MITCHELL, Chair

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency Amendment)

16 KAR 1:030E. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial.

RELATES TO: KRS Chapter 13B, 160.380, 161.010-161.100, 161.102, 161.120, 218A.010

STATUTORY AUTHORITY: KRS 161.028(1), 161.120(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining an educator's certificate; revoke, suspend, or refuse to issue or renew a certificate; impose probationary or supervisory conditions upon a certificate; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the EPSB to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the EPSB to submit to drug testing when the educator engaged in misconduct involving the illegal use of controlled substances. This administrative regulation identifies the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Purpose.

- (1) In order to support the mission of the EPSB, the EPSB may take action against an educator's certificate in an effort:
 - (a) To ensure that an educator has an understanding of an educator's professional duties and responsibilities; and
 - (b) To protect students, parents of students, school personnel, or school officials.
- (2) The EPSB may take action against any certificate issued under KRS 161.010 to 161.102 for any of the reasons set forth in KRS 161.120(1).

Section 2. Complaints and Reports.

- (1) A complaint may be made by any person, organization, or entity. The complaint shall be in writing and shall be signed by the person offering the complaint. The complaint shall be sent to the EPSB and contain:
 - (a) The name, phone number, and address of the person making the complaint, and the name of the educator against whom the complaint is made. If known, the person making the complaint shall include the address of the school district where the educator works;
 - (b) A clear and concise description of the issues of fact; and
 - (c) Any supporting documentation necessary to provide sufficient credible evidence that a violation may have occurred. This may include but is not limited to signed witness statements, audio, video, contact information for eyewitnesses, or other documentary evidence.
- (2) A report shall be sent to the EPSB by superintendents of local school districts pursuant to KRS 161.120(3).
 - (a) A superintendent's duty to report shall include the reporting of criminal convictions discovered by the district pursuant to KRS 160.380, even if the conviction occurred prior to the date the educator's certification was issued.
 - (b) The superintendent shall have thirty (30) calendar days from the date the superintendent is made aware of the criminal conviction to report that criminal conviction to the EPSB pursuant to KRS 161.120(3)(a).

- (c) Failure of the superintendent to provide the full facts and circumstances or to forward copies of all relevant documents and records in the superintendent's possession pursuant to KRS 161.120(3)(b), may result in action against the superintendent's certificate pursuant to 161.120(1)(j).
- (d) The superintendent shall supplement the report in writing within thirty (30) calendar days of the superintendent receiving the additional information or supporting documentation.
- (3) For complaints and reports received prior to July 15, 2024, EPSB staff shall do an initial review of all complaints and reports to determine whether there is sufficient credible evidence that a violation of KRS 161.120(1) may have occurred. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, EPSB staff shall open a file and assign that file a number.
- (a) The EPSB staff shall send a copy of these complaints and reports by certified mail to the educator's address on file with EPSB.
- (b) The educator shall have the right to file a rebuttal with the EPSB within thirty (30) calendar days from the date the educator receives the complaint or report from the EPSB unless the parties agree to extend that deadline.
- (c) EPSB staff shall add the case to the EPSB's docket and prepare the file for EPSB review by redacting all the educator's identifiers if one (1) of the following occurs:
1. The educator's rebuttal is received;
 2. The notice is returned as undeliverable; or
 3. The educator:
 - a. Fails to file a rebuttal with the EPSB; and
 - b. Has not requested to extend the thirty (30) day deadline.
- (d) The EPSB shall determine whether the nature and quality of the alleged violation warrants deferral, dismissal, training, admonishment, further investigation, or initiation of a hearing.
- (e) In making its determination, the EPSB shall consider if the allegation, if proven, would warrant sanction by the EPSB.
- (4) For complaints and reports received on or after July 15, 2024, the EPSB shall use the process established in KRS 161.120(2).
- (a) A complaint shall be considered complete when the complainant indicates that the complaint contains all information in the complainant's possession and is complete.
- (b) If the initial review under KRS 161.120(2)(a) finds sufficient evidence that a violation may have occurred, EPSB staff shall open a file and assign that file a number.
- (c) Notices to the certificate holder and superintendents required by KRS 161.120(2)-(3) shall be made using the Kentucky Educator Credentialing System (KECS). Notices to non-superintendent complainants shall be sent to the contact information provided by the complainant.
- (d) To extend the rebuttal period an additional thirty (30) days, the written request under KRS 161.120(2)(b) shall be received by EPSB staff on or before noon eastern time on the date the rebuttal period expires.
- (e) Conferences with certificate holders under KRS 161.120(2)(d) shall be virtual unless both parties agree to hold the conference in-person.
- (5) When making a determination as to the level of sanctions warranted, the EPSB shall consider the following factors:
- (a) The seriousness of the alleged violation;
 - (b) Whether an attempt to conceal the alleged violation was made;
 - (c) Whether there were any prior violations;
 - (d) Whether training is appropriate to prevent further violations;
 - (e) Whether the sanction is necessary to deter future violations; or
 - (f) Other relevant circumstances or facts.

(6) If after further investigation occurs, the EPSB determines that sanctions may be warranted, and an agreed upon resolution could not be achieved, the EPSB shall initiate a hearing.

(a) If the EPSB votes to initiate a hearing, the EPSB shall, by majority vote, approve the issuance of a notice of hearing and the statement of charges. The statement of charges shall include specific reasons for the EPSB's proposed action, including the:

1. Statutory or regulatory violation;
2. Factual basis on which the disciplinary action is based; and
3. Penalty sought.

(b) The parties may agree to resolve the matter informally at any time, in accordance with KRS 161.120(9). Any agreement to resolve the matter shall be memorialized in an agreed order. To be valid, the agreement shall be approved by the EPSB. The agreed order shall be signed by the educator, the educator's attorney, if any, and the EPSB chair.

(c) The EPSB staff shall initiate the hearing process by filing the statement of charges with the hearing officer, in accordance with KRS Chapter 13B, after the EPSB refers the matter to hearing.

Section 3. Hearing Process.

(1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) The educator has the right to request a private in-person hearing, in accordance with KRS 161.120(6)(c).

(a) The educator shall waive the right to a private in-person hearing if the educator fails to specifically make a written request for a private in-person hearing at least five (5) days prior to the hearing.

(b) Even if the educator elects to proceed with a private, in-person hearing, the hearing transcript for that hearing shall be subject to disclosure after the EPSB issues its final order unless exempt from disclosure by law.

(c) All hearings shall be conducted in the office of the EPSB unless a new location is agreed upon by the parties.

(3) The hearing officer's recommended order shall include a discussion of the factors set forth in Section 2(5) of this administrative regulation if recommending sanctions.

(4) A party may file any exceptions to the recommended order within fifteen (15) calendar days from the date the recommended order is mailed.

(a) This time limit shall not be extended, and responses to exceptions shall not be considered by the EPSB.

(b) Any disagreement with a factual finding or conclusion of law in the recommended order not contained in the exceptions shall be waived.

Section 4. Final Decision.

(1) The EPSB may delegate to the EPSB chair the authority to sign a decision made or order issued under this section on behalf of a majority of the EPSB members.

(2) After the EPSB chair certifies that a quorum is present, a majority of the voting members present shall be required to make a final decision on the recommended order, agreed order, or request for the issuance of an order of default judgment.

(3) In making a final order in accordance with KRS 13B.120, the EPSB shall consider the record including the recommended order and any exceptions filed.

Section 5. Procedure for Suspension, Surrender, or Revocation of a Certificate.

(1) When the EPSB issues a final decision, the EPSB staff shall upload a copy to the certificate holder's KECS account. Final orders issued pursuant to KRS 13B.120 shall also be sent to the certificate holder by certified mail using the address the educator provided to the EPSB, or any other means permitted by law.

- (2) A record of EPSB action shall become part of the educator's official records maintained by EPSB staff.
- (3) If the EPSB final decision impacts the certificate holder's eligibility for employment, the EPSB staff shall notify the certificate holder's employing district of the action taken.
- (4) EPSB staff shall also ensure that the suspension, surrender, or revocation is noted on the EPSB's Web site.
- (5) EPSB staff shall also ensure that the information is provided to the National Association of State Directors of Teacher Education and Certification (NASDTEC) for inclusion in the NASDTEC Clearinghouse, which is a searchable database administered by NASDTEC relating to educator certification and discipline.

Section 6. Procedure for Reinstatement of a Suspended Certificate.

(1) Reinstatement of a suspended certificate for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010 shall be subject to the following requirements:

(a) A certificate that has been suspended by the EPSB shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the EPSB.

(b) If a certificate lapses during a period of suspension, the certificate holder shall apply for renewal of the certificate at the end of the suspension period. The EPSB shall renew the certification if the certificate holder has met all educational requirements for renewal and has completed all of the conditions and requirements ordered by the EPSB.

(c) The burden to initiate the process to reinstate a suspended certificate shall be on the certificate holder.

1. If the suspension does not include conditions, the EPSB staff shall remove all references of the suspension from the Web site at the conclusion of the suspension period.

2. If the suspension includes conditions, the certificate holder shall provide the EPSB proof that all conditions have been met.

a. The EPSB shall reinstate the certificate at the conclusion of the suspension period once the EPSB receives evidence from the certificate holder demonstrating that the conditions of suspension were met.

b. The EPSB shall remove from its Web site any reference to the suspension once the certificate holder has provided evidence that the conditions of suspension have been met.

(d) The record of suspension as well as reinstatement of the certification shall become part of the educator's official certification records, but the record of suspension shall not be referenced on any certificate subsequently issued to the certificate holder.

(2) Reinstatement of a suspended certificate for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010 shall be subject to the following requirements:

(a) In addition to conditions for reinstatement of a suspended certificate established in subsection (1) of this section, the certificate holder shall provide written evidence that the certificate holder has submitted to a drug test at the certificate holder's own expense administered by a drug testing facility approved by the EPSB within thirty (30) days of reinstatement.

(b) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the EPSB.

(c) A certificate holder subject to the terms of this subsection may petition the EPSB to approve a state approved drug testing facility of the certificate holder's choice.

1. Petition to Approve Drug Testing Facility. The petition shall contain the following information:

- a. The drug testing facility's name and location;
 - b. The name and telephone number for the director of the facility;
 - c. The method of test specimen collection;
 - d. The drug testing facility's method of assuring identity of the test subject;
 - e. Procedures for testing specimens, including forensic testing methods; and
 - f. Chain of custody protocols.
2. The drug testing facility shall test at a minimum for the following named controlled substances:
- a. Marijuana;
 - b. Cocaine;
 - c. Opiates;
 - d. Amphetamines;
 - e. Phencyclidine;
 - f. Morphine;
 - g. MDMA (Ecstasy);
 - h. Methadone;
 - i. Benzodiazepines;
 - j. Barbiturates; and
 - k. Oxycodone.
- (d) If the results of the drug test indicate illegal drug use by the certificate holder, the certificate shall not be reinstated.

Section 7. Procedure for Reissuance of a Certificate after Revocation.

(1) If revocation was for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010, the conditions established in this subsection shall apply.

- (a) The former certificate holder shall complete the same application that all educators in Kentucky shall complete to obtain certification.
- (b) The former certificate holder shall bear the burden of proving that the certificate holder is fit for practice.
- (c) The former certificate holder shall satisfy all current educational requirements for the certificate sought.
- (d) The EPSB may include terms and conditions that the EPSB reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(12)(b) if reissuing the certificate.

(2) If revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010, the former certificate holder shall:

- (a) Comply with the requirements established in Section 6(1) of this administrative regulation; and
- (b) Submit to drug testing as established in Section 6(2) of this administrative regulation.

(3) Regardless of the reason for the revocation, the revocation shall be noted on the certificate that is issued and shall remain on the EPSB Web site.

Section 8. Denial of Application for a Certificate. If the EPSB denies an individual's application for a Kentucky certificate pursuant to this administrative regulation, the applicant may file an appeal in accordance with KRS 161.120(6)(a)2.

Section 9. Motion to Reconsider.

- (1) In accordance with KRS 161.120(10), the EPSB may reconsider, modify, or reverse its decision of its own volition.
- (2) Under exceptional circumstances, the EPSB may reconsider, modify or reverse its decision on any disciplinary matter upon a motion by one (1) of the parties.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: July 15, 2024

FILED WITH LRC: July 15, 2024 at 10:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days 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 submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd 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.