

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amendment)

16 KAR 1:030. 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, 161.120, 218A.010~~[(6)]~~

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. The EPSB is authorized to revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; 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~~[Education Professional Standards Board]~~ to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the EPSB~~[Education Professional Standards Board]~~ because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. 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~~[Education Professional Standards Board (EPSB)]~~, the EPSB~~[board]~~ 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~~[board]~~ may take action against any certificate issued under KRS 161.010 to 161.100 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 offices of the EPSB.]~~ 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; and

(b) A clear and concise description of the issues of fact.

(2) A report shall be sent to the EPSB by superintendents of local school districts pursuant to KRS 161.120(2)(a).

(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~~[or the superintendent's designee]~~ shall have thirty (30) days from the date ~~the~~~~[that]~~ superintendent receives notice of the criminal conviction to report that criminal conviction to the EPSB pursuant to KRS 161.120(2)(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 161.120(2)(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 30 days of the superintendent receiving the additional information or supporting documentation.

(3) 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[board] 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[board] 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[board] shall consider if the allegation, if proven, would warrant sanction by the EPSB[board].

(f) When making a determination as to the level of sanctions warranted, the EPSB[board] shall consider the following factors:

1. The seriousness of the alleged violation;
2. Whether the alleged violation was premeditated or intentional;
3. Whether an attempt to conceal the alleged violation was made;
4. Whether there were any prior violations;
5. Whether training is appropriate to prevent further violations;
6. Whether the sanction is necessary to deter future violations; or
7. Other relevant circumstances or facts.

(4)(a) If the EPSB[board] determines that sanctions are warranted, the EPSB[board] shall refer the matter to hearing.

(b) If the EPSB[board] refers the matter to hearing, the EPSB[board] 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[board's] proposed action, including the:

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

(c) The parties may agree to resolve the matter informally at any time. Any agreement to resolve the matter shall be memorialized in an agreed order. To be valid, the agreement shall be approved by the EPSB[board]. The agreed order shall be signed by the educator, the educator's attorney, if any, and the EPSB[board] chair.

(d) The EPSB staff shall initiate the hearing process, in accordance with KRS Chapter 13B, within thirty (30) days after the EPSB[board] refers the matter to hearing.

Section 3. (1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) Either party may be entitled to a reasonable continuance of the hearing date for good cause.

(3) The educator has the right to request a private in-person hearing.

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

(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[board] issues its final order[decision] unless exempt from disclosure by law.

(c) All hearings shall be conducted in the office of the EPSB[Education Professional Standards Board, 100 Airport Road, Frankfort, Kentucky 40601] unless a new location is agreed upon by the parties.

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

(5) A party may file any exceptions to the recommended order within fifteen (15) calendar days from the date the recommended order is mailed[after receiving the recommended order].

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

(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 board members. [In making its final decision, the board shall consider the record including the recommended order and any exceptions filed.]

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

Section 5. Procedure for Suspension, Surrender, or Revocation of a Certificate. (1) When the EPSB[board] issues a final decision [in accordance with KRS 13B.120], the EPSB staff shall mail a copy of the final decision to the educator by certified mail using the address the educator provided to the EPSB[Education Professional Standards Board], or any other means permitted by law.

(2) A record of EPSB[board] action shall become part of the educator's official records maintained by EPSB staff.

(3) Immediately following the issuance of the EPSB[board's] final decision, the EPSB staff shall notify the reporting parties of the action taken.

(4) EPSB staff shall also ensure that the suspension, surrender, or revocation is noted on 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. The clearinghouse 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~~[(6)]~~.

(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[board] 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[board].

(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~~[(6)]~~.

(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[board] within thirty (30) days of reinstatement ~~[or submission of an application for reissuance of the certificate]~~.

(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 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 [~~or reissued~~].

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[~~(6)~~], 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~~[~~Education Professional Standards Board~~] may include terms and conditions that the ~~EPSB~~[~~board~~] reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(11)(b) if reissuing the certificate.

(2) If revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010[~~(6)~~], the former certificate holder shall:

(a) Comply with the requirements established in Section 6(1) of this administrative regulation [~~for reissuance of certification after revocation for all other offenses~~]; and

(b) Submit to drug testing as established in Section 6(2) of this administrative regulation [~~for the suspension resulting from illegal use of controlled substances~~].

(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~~[~~Education Professional Standards Board~~] 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(5)(a)2.

Section 9. Motion to Reconsider. (1) 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.

LISA RUDZINSKI, Board Chair

APPROVED BY AGENCY: October 12, 2021

FILED WITH LRC: October 15, 2021 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 21, 2021, 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 December 31, 2021. 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the conditions for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify the conditions for initiating a disciplinary action against an educator's certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance and application denial.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish the standards and requirements for obtaining and maintaining a teaching certificate; and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1) KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial.

(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 includes minor changes to the formatting and order of sections. It also adds sections to provide clarity regarding a superintendent's duty to report, requests for a private hearing and motions to reconsider. In addition, the proposed amendment removes the EPSB's former office address from the regulation and corrects the timing required to file exceptions to a recommended order to match the requirement in KRS 13B.110(4).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide additional clarity and improve efficiency in the EPSB's processes relating to educator cases and appeals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate, and provides the authority to issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of actions regarding any certificate for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment further clarifies the EPSB's procedures for certificate surrender, revocation, suspension, reinstatement, reissuance, and application denial and will ensure the efficient processing of complaints and reports filed against certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect applicants seeking teaching certifications, educators currently holding certifications, and superintendents for the 171 Kentucky public school districts that employ educators holding certifications.

(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: No action by the listed entities will be required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be clarity for superintendent's on their duty to report and clarity for educators on requesting a private hearing and filing motions to reconsider.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds generated by educator certification application fees.

(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 increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and public-school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.120, KRS 161.175

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment. The EPSB spends approximately \$500,000 per year to process complaints and reports against educators holding a certification.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the amendment. The EPSB hopes to reduce the administrative costs associated with the processing of complaints and reports against educators holding a certification once this amendment is made to its existing regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: