

## **780 KAR 3:120. Appeals and hearings.**

RELATES TO: KRS Chapter 13B, 151B.035, 151B.055, 151B.085, 344.030

STATUTORY AUTHORITY: KRS 151B.035(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(8) requires the Executive Director of the Office of Career and Technical Education to promulgate administrative regulations governing employee appeals. This administrative regulation establishes the appeals and hearings requirements for employees.

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 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 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 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) 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) 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, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (17 Ky.R. 746; eff. 10-14-1990; 1881; 2444; eff. 3-19-2001; 28 Ky.R. 1206; eff. 1-14-2002; 35 Ky.R. 1871; 2237; eff. 5-1-2009; Crt eff. 6-28-2019.)