

## **780 KAR 6:100. Appeals and hearings.**

RELATES TO: KRS 151B.035, 151B.055

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 comprehensive administrative regulations governing employee appeals. This administrative regulation establishes the appeals and hearing requirements for employees.

Section 1. General Provisions. (1) As provided in KRS 151B.055(10), an employee in the unclassified service may appeal to the Kentucky Technical Education Personnel Board.

(2)(a) An appeal shall be filed within thirty (30) calendar days after receiving notification of the penalization or becoming aware of the penalization through the exercise of due diligence.

(b) If the last day of the filing period falls on a day when the office of the secretary of the board is closed during normal working hours, the appeal may be filed on the next regular working day.

(3)(a) The 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 appealing employee has retained counsel at the time of 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 appealing employee shall be submitted by that attorney.

(5) Unless otherwise directed by the board, the secretary of the board shall assign a hearing officer or officers to each appeal.

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

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

Section 2. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause.

(a) The request shall be in writing, state the reason for the request, and include proposed dates for rescheduling.

(b) The request shall be filed with the board through the office of the secretary of the board and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) A party objecting to a requested continuance may file a written objection stating the reason.

(a) An objection shall be filed with the board through the office of the secretary of the board within five (5) days prior to the scheduled hearing.

(b) Copies of the written objection shall be mailed to all parties.

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

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

(5)(a) All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the secretary of the board 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 3. Prehearing Procedures. (1) All motions, requests, or filings shall be in writing, filed with the board through the office of the secretary, and served on all other parties.

(2)(a) An interim order by the hearing officer shall be executed and transmitted by the secretary of the board to all parties.

(b) Interim orders shall not be reviewable by the board except on final review, unless otherwise provided in the interim order.

(3)(a) If an appealing 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 appealing employee shall be submitted by that attorney.

(4) An appealing employee shall notify all parties and the board in writing of any change of address.

(5)(a) Subpoena forms shall be available in the office of the secretary of the board and shall be issued by the secretary of the board.

(b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(6) A deposition may be taken only in extraordinary circumstances and upon authorization by the hearing officer.

(a) A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing.

(b) An objection shall be filed prior to the scheduled hearing.

(7)(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 any party, or upon the hearing officer's own motion, the hearing officer may join other parties as necessary to appropriately consider the matter on appeal.

(8) The hearing officer may schedule a prehearing conference to define the issues, determine which facts, if any, may be stipulated, rule on pending motions or requests, and address any matters that shall facilitate the hearing.

(9) An agreed settlement shall be submitted in writing for the full board's review and final action.

(10) The secretary of the board, 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 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(a) The hearing officer shall to make all decisions and rule on all matters concerning the conduct of the hearing.

(b) The hearing officer shall require an orderly and proper decorum at the hearing and shall be authorized to require compliance with the hearing officer's rulings.

(2) Failure of any party to appear at the hearing shall result in an adverse ruling against that party.

(3) The rules of civil procedure shall not apply.

(4)(a) The hearing officer shall direct one (1) of the parties to present its case first, examine witnesses, and submit documentation, subject to cross examination.

(b) The opposing party shall then present its case, examine witnesses, and submit documentation, subject to cross examination.

(5)(a) All parties shall provide three (3) copies of any exhibit that is to be introduced as evidence.

(b) Copies shall be prepared prior to the hearing.

(6) The proceedings and evidence presented shall be recorded by a court reporter.

Section 5. Findings and Recommendations; Exceptions. (1) Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts, and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the secretary of the board to all parties.

(3)(a) Any party may submit written exceptions to the findings of fact and recommendations.

(b) Exceptions shall be filed with the board through the office of the secretary of the board within twenty (20) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered and served on all parties.

(4)(a) Any party may submit a written response to exceptions filed with the board.

(b) The response shall be filed with the board through the office of the secretary of the board within ten (10) calendar days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(5) 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.

Section 6. Board Review and Action. (1) The board shall:

(a) Adopt as submitted the findings and recommendations of the hearing officer;

(b) Amend the findings or recommendations based on evidence or information contained in the record prior to adoption; or

(c) Order the appeal remanded to the hearing officer for further action as appropriate.

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

(a) The order shall be prepared, executed, and entered at the direction of the secretary of the board.

(b) Copies of the order shall be transmitted to all parties by the secretary of the board. (17 Ky.R. 1287; eff. 12-9-1990; 35 Ky.R. 1901; 2251; eff. 5-1-2009; Crt eff. 11-16-2018.)