

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education
(Amendment)

791 KAR 1:030. Procedures for hearings.

RELATES TO: KRS Chapter 13B, 165A.350(4)(b), 165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the commission to promulgate administrative regulations for the administration of KRS Chapter 165A. This administrative regulation establishes hearing procedures.

Section 1. Definitions.

(1) "Charge" means a specific allegation contained in a formal pleading, as established in Section 5(3) of this administrative regulation, issued by the commission alleging a violation of a specified provision of KRS Chapter 165A or the requirements established in 791 KAR Chapter 1.

(2) "Complaint" means a written allegation of misconduct by an agent or school, or other allegation of a violation of KRS Chapter 165A, the requirements established in 791 KAR Chapter 1, or another state or federal statute or administrative regulation applicable to an agent or school.

(3) "Complaint committee" means the committee appointed pursuant to KRS 165A.340.

(4) "Formal pleading" means a formal administrative statement authorized by the commission which sets forth charges against a licensed school or agent and commences a formal disciplinary proceeding, pursuant to KRS Chapter 13B, or requests a court to take action.

(5) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the commission to assist the commission in the investigation of a complaint or an investigator employed by the Attorney General for the commission.

Section 2. Complaint Committee. In accordance with KRS 165A.340(12), the complaint committee shall:

(1) Be appointed by the chair of the commission to:

(a) Review complaints and investigative reports;

(b) Participate in an informal proceeding to resolve complaints; and

(c) Make recommendations for disposition of complaints to the full commission including the dismissal of a complaint or the issuance of a formal pleading; and

(2) Consist of three (3) persons who may be assisted by the commission staff and counsel to the commission.

Section 3. Receipt of Complaints.

(1) A complaint may be submitted by an individual, organization, or entity.

(2)

(a) A complaint shall be in writing and shall be filed on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records.

(b) The Form PE-24 shall be signed and certified as to its truth by the person offering the complaint.

(3)

- (a) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint and the time and place of the complaint committee hearing, once established.
- (b) The agent or school shall file a written response with the commission within ten (10) days from the date of receipt.
- (4) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant, along with the time and place of the complaint committee hearing, once established.
- (5) Upon receipt of the agent or school's response, the complaint committee may request an additional response from the complainant, agent, or school if additional issues are raised or clarification is needed.

Section 4. Initial Review.

- (1) After the receipt of a complaint or the expiration of the period for the response, the complaint committee shall consider the complaint, response, and other relevant material available.
- (2)
 - (a) The complaint committee may take steps to enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.
 - (b) An agreed order or settlement reached through this process shall be approved by the commission.
 - (c) The complaint committee may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.
- (3) If the complaint committee determines a complaint warrants an investigation against either an agent or school, the complaint committee shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity.

Section 5. Results of Initial Review.

- (1) After a complete review of the complaint, and implementation of any actions available to the complaint committee as set forth in Section 4 of this administrative regulation, a recommendation shall be made by the complaint committee to the commission.
- (2) If the commission determines a complaint does not warrant further action or the issuance of a formal pleading against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.
- (3) If the commission determines a violation of a statute or administrative regulation may have occurred or has occurred, then the commission shall:
 - (a) Direct the complaint committee or commission staff to undertake further action as established in KRS Chapter 165A or Section 4 of this administrative regulation;
 - (b) Direct the issuance of a formal pleading against either an agent or school by commission staff; or
 - (c) Review the formal pleading and, if approved, it shall be signed by the chairman and served upon the agent or school as required by KRS 13B.050.

Section 6. Operating without Appropriate License or Agent Permit. If the commission receives a complaint that an individual or school may be operating without the appropriate agent permit or license, the commission shall:

- (1) Authorize commission staff to send a letter to the individual or school advising of a possible need for a permit or license, and enclose the appropriate application package;

- (2) Authorize commission staff to issue a letter ordering the individual or school to cease and desist from operating the school;
- (3) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or
- (4) Initiate action in Franklin Circuit Court for injunctive relief.

Section 7. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Form to File a Complaint", Form PE-24, 2017~~[edition]~~; and
 - (b) "Authorization for Release of Student Records", Form PE-25, 2017~~[edition]~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, ~~[3rd Floor, Capital Plaza Tower,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MISTY N. EDWARDS, Executive Director
For DAVID W. FLOYD, Chair

APPROVED BY AGENCY: August 4, 2021

FILED WITH LRC: August 4, 2021 at 11:10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 25, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, KY. Individuals interested in being heard at this hearing 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 submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Misty Edward

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation (791 KAR 1:030) establishes the procedures for hearings.

(b) The necessity of this administrative regulation:

This administrative regulation (791 KAR 1:030) establishes the procedures for hearings.

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

The statute requires the commission to promulgate regulations regarding hearings.

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

This administrative regulation provides guidance to stakeholders regarding complaints and hearings.

(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 simply adds the word agent for consistency in 791 KAR Chapter 1.

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

This amendment is solely for the purpose of consistency.

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

The statute requires the commission to promulgate administrative regulations for the administration of KRS Chapter 165A. This administrative regulation establishes hearing procedures.

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

This amendment provides clarification only.

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

The Kentucky Commission on Proprietary Education, the 189 licensed proprietary schools, and any proprietary school requiring licensure pursuant to KRS 165A. (4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: No action is required. This is simply for clarification purposes. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is not a cost increase associated with the proposed amendments. (c) As a result of compliance, what benefits will accrue to the entities: This amendment is simply for consistency and clarification purposes.

(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 answer provided.

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

No answer provided.

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

No answer provided.

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

(a) Initially:

There will be no costs to the commission associated with the implementation of this amendment.

(b) On a continuing basis:

There will be no costs to the commission associated with the implementation of this amendment.

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

The commission is funded entirely through fees paid by licensed schools.

(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:

The amendment to this administrative regulation will not require an increase in fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

The amendment to this administrative regulation will not require an increase in fees.

(9) TIERING: Is tiering applied?

Tiering is not applied because there is no change to the fee or application structure.

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 Kentucky Commission on Proprietary Education and proprietary schools.

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

KRS 165A, KRS 165A.340(6), 165A.400.

(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.

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

(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?

This amended administrative regulation will not generate any new revenue for the commission.

(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?

This amended administrative regulation will not generate any new revenue for the commission.

(c) How much will it cost to administer this program for the first year?

There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years?

Future costs will remain unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation:

There is no fiscal impact associated with this amendment.