

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 1:140. Student records; hearing procedures.

RELATES TO: KRS 160.730, ~~20 U.S.C. 1232g~~(a)(2).

STATUTORY AUTHORITY: KRS 156.070, 160.730

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.730 provides for parents or eligible students to challenge the content of a student education record on the grounds~~[to ensure]~~ that the information contained in the record or report is ~~[not]~~ inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. KRS 160.370 also mandates that the Department of Education establish by administrative regulation hearing procedures that may be utilized to challenge the content of a student education record when no agreement can be reached. The Family Educational Rights and Privacy Act (FERPA) mandates a parent or eligible student has the opportunity for a hearing to challenge the content of the student's education records on the grounds that the information is inaccurate, misleading, or in violation of privacy rights of the student. This administrative regulation establishes those hearing procedures.

Section 1. If a school district denies the~~[decides not to comply with a]~~ request of a parent or eligible student~~[student's parent(s) or legal guardian]~~ to amend the education record of the student, the school district shall notify the student's parent or eligible student~~[parent(s) or guardian]~~ of the decision and advise them of the~~[their]~~ right to a hearing to challenge the information contained in the education record and alleged~~[believed]~~ to be inaccurate, misleading, inappropriate, or in violation of the student's rights.

Section 2. Hearing Procedures.

(1) Upon request of a parent or eligible student, the school district shall conduct~~[arrange for]~~ a hearing to be held within thirty (30) days after the request for hearing and notify the ~~[student's parent(s) or guardian]~~, reasonably in advance, of the date, place, and time of the hearing.

(2) The hearing shall be conducted by any individual who is a disinterested party and is appointed by the superintendent to conduct the hearing~~[a hearing officer who is a disinterested party and is a certified official of the district appointed by the superintendent]~~.

(3) The hearing shall be confidential~~[private]~~. Persons other than the student, parent(s), witnesses, and counsel shall not be admitted into the hearing.

(4) The hearing official appointed by the superintendent~~[officer]~~ shall hear evidence from the school staff and the parent or eligible student~~[student's parent(s) or guardian]~~ to determine any points of disagreement regarding the education records.

(5) The parent or eligible student~~[student's parent(s) or guardian]~~ shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The parent or eligible student~~[parent(s) or guardian]~~ may be assisted by one (1) or more individuals, including an attorney, at their expense.

(6) The hearing official appointed by the superintendent~~[officer]~~ shall make a determination after hearing the evidence in writing within ten (10) working days following the close of the hearing. The hearing official appointed by the superintendent~~[officer]~~ shall make a determination based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reason for

the decision. The parties to the hearing shall be provided a copy of the ~~hearing officer's~~ decision.

Section 3. Posthearing Procedures.

(1) If as a result of the hearing, the hearing official appointed by the superintendent~~officer~~ decides ~~after the hearing~~ the challenged information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the hearing official~~officer~~ shall inform the parent or eligible student~~student's parent(s) or guardian~~ of the right to place a statement in the education record commenting on the contested information or stating why he disagrees with the decision of the hearing official~~officer~~. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the education record, it shall also disclose the statement.

(2) If, as a result of the hearing, the hearing official appointed by the superintendent~~officer~~ decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district shall amend the education record accordingly and inform in writing the parent or eligible student~~student's parent(s) or guardian~~ of the amendment.

Section 4. Alternative Hearing Procedures. If a school district has an education record~~a records~~ hearing policy and procedure that provides a substantially equivalent level of due process protection as provided in this administrative regulation, the school district may ~~elect to~~ submit its policy on education records hearing procedure to the Department of Education, Office of Legal Services, for its review and approval as to compliance with this administrative regulation.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

*JASON GLASS, Commissioner
LU YOUNG, Chair*

APPROVED BY AGENCY: May 4, 2022

FILED WITH LRC: May 10, 2022 at 12:32 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022 at 10:00 am, in the State Board Room, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 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 cancelled. 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. The public hearing will be audio recorded. Pursuant to KRS 13A.270, a transcript of the public hearing will not be made unless a written request for a transcript is made and payment for the transcript is made by the requestor. 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 July 31, 2022. 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 amended regulation sets forth the hearing procedures for school districts to follow if a parent or eligible student challenges an education record on the grounds that it is inaccurate, misleading, or otherwise in violation of privacy or other rights of the student.

(b) The necessity of this administrative regulation:

The Family Educational Rights and Privacy Act (FERPA) and KRS 160.730 mandate educational agencies and institutions have hearing procedures if a parent or eligible student wishes to challenge the student's education record.

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

This regulation conforms to FERPA and KRS 160.730 by providing the procedural guide for a hearing to challenge a student's education record.

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

This regulation assists the school districts in implementing FERPA and KRS 160.730 by providing hearing procedures compliant with both laws.

(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:

The amendment of this regulation includes clarification of the who will conduct the hearing; who will appoint the person who to conduct the hearing; citing the federal statute that mandates a hearing will be available to a parent or eligible student; and editing the regulation so all the language is consistent with FERPA and KRS 160.730.

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

The regulation required clarification because it created confusion regarding who will conduct the hearing. Further amendments were to comply with the drafting requirements of KRS Ch. 13A.

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

The amendment of the regulation conforms to FERPA and KRS 160.730 by providing the procedural guide for a hearing to challenge a student's education record.

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

This regulation assists the school districts in implementing FERPA and KRS 160.730 by providing hearing procedures compliant with both laws.

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

Those affected by this regulation include: Local educational agencies, the Kentucky Board of Education, and the Kentucky Department of Education.

(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:

Local educational agencies will conduct hearings when requested by a parent or eligible student to challenge an education record on the grounds that it is inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. If a local educational agency has its own education record hearing policy and procedure then they will submit it to KDE for review and approval as to the compliance with this administrative regulation.

(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 anticipated additional budget impact related to this administrative regulation for local education agencies, KBE, or KDE. School districts are required to conduct these hearings pursuant to FERPA and KRS 160.730. Therefore, costs related to those hearings are a product of statute, not this administrative regulation.

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

Amending this regulation will benefit local educational agencies by providing clarity on the procedure for conducting a hearing.

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

(a) Initially:

This regulation has existed since 1995. Initial costs, if any, occurred nearly 30 years ago. No additional start up costs are anticipated as a result of this amendment.

(b) On a continuing basis:

The local educational agencies will incur costs related to conducting a hearing in the event one is requested. These hearings are required pursuant to statute. There are no additional anticipated costs related to this administrative regulation.

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

Local school districts will utilize general funds for costs associated with conducting a hearing requested pursuant to the administrative regulation.

(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 are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This regulation neither establishes any fees nor directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied because this administrative regulation applies equally to all local education agencies.

FISCAL NOTE

(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?

Local education agencies and the Kentucky Department of Education (KDE).

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

KRS 160.730 and 20 U.S.C. 1232g(a)(2)

(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?

None.

(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?

None.

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

This regulation has existed since 1995. Therefore, there are no additional anticipated costs related to amendment of this administrative regulation. Local school districts will have costs related to conducting hearings when requested by a parent or eligible student.

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

This regulation has existed since 1995. Local school districts will have costs related to conducting hearings when requested by a parent or eligible student.

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

Revenues (+/-):None.

Expenditures (+/-):No change as a result of amendment. See response to 3(d).

Other Explanation:

None.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

Regulated entities are public schools and districts. See response to 3(a).

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Regulated entities are public schools and districts. See response to 3(b).

(c) How much will it cost the regulated entities for the first year?

Regulated entities are public schools and districts. See response to 3(c).

(d) How much will it cost the regulated entities for subsequent years?

Regulated entities are public schools and districts. See response to 3(d).

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

Cost Savings (+/-):None anticipated.

Expenditures (+/-):No change as a result of amendment. See response to 3(d).

Other Explanation:

None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No major economic impact as defined by KRS Chapter 13A is anticipated. Both KRS 160.730 and 20 U.S.C. 1232g(a)(2) require hearings in certain circumstances when student educational records are challenged. Amendment to this administrative regulation does not alter that requirement. Instead, the regulation amendment clarifies terms and requirements that apply to such hearings when they occur. No increased cost of hearing is anticipated as a result of this amendment.