

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:130. Employee grievances.

RELATES TO: KRS 156.808(3)(t), 156.820

STATUTORY AUTHORITY: KRS 156.070, 156.808(3)(t)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(t) requires the Kentucky Board of Education~~[Executive Director of the Office of Career and Technical Education]~~ to promulgate administrative regulations governing employee grievances and complaints for certified and equivalent staff of the Office of Career and Technical Education. ~~[KRS 156.808(3)(t) requires the Office of Career and Technical Education to prescribe a form to complete by an employee who wishes to file an appeal.]~~ This administrative regulation establishes the requirements governing employee grievances for certified and equivalent employees of the Office of Career and Technical Education.

Section 1. Definition. "Grievance" means a complaint filed by an employee which concerns working conditions over which the Office of Career and Technical Education has control and which has specifically occurred, or of which the employee has become aware, within thirty (30) calendar days prior to filing.

Section 2. General Provisions.

(1) An employee in the certified and equivalent personnel system who believes that the employee has been subjected to unfair or unjust treatment concerning the conditions of employment may file a grievance in accordance with this administrative regulation.

(2) A grievance concerning an action which is appealable directly to the Kentucky Technical Education Personnel Board may be filed with the Office of Career and Technical Education. The filing of a grievance with the office shall not:

(a) Prohibit the employee from filing an appeal with the Kentucky Technical Education Personnel Board; or

(b) Extend the thirty (30) calendar day appeal period.

(3) An employee shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) The associate commissioner~~[appointing authority]~~ shall inform all employees in the Office of Career and Technical Education of the provisions of this administrative regulation, or any modifications in the levels of review.

(5) The associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education shall make available to employees, ~~[through the appointing authority,]~~ the "KRS 156 Grievance Form ~~[-151B]~~", which shall be used to file a grievance. The form shall contain a notice that, if the grievance concerns an action appealable directly to the Kentucky Technical Education Personnel Board pursuant to KRS 156.820, the employee's right to file an appeal shall not be extended beyond thirty (30) calendar days.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing a grievance, except for the participation in an interview scheduled by the agency to evaluate or investigate the grievance.

Section 3. Procedures.

(1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) calendar days following occurrence, or the employee becoming aware through the exercise of due diligence, of the action which is the subject of the grievance. If an act of

the immediate supervisor is the basis for the grievance, the grievance shall be filed with the next line supervisor.

(2) The employee shall set forth in writing the basis of the grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, the employee shall attach it to the grievance.

(3) If a grievance is filed that alleges harassment or discrimination on the basis of race, color, religion, national origin, sex, disability or age, the recipient shall immediately notify the associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education and the agency~~[Office of]~~ Equal Employment Opportunity (EEO) Coordinator to comply with the affirmative action plan.

~~[(4)] [An interview to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.]~~

~~(4)~~ ~~[(5)]~~ An interview to evaluate or investigate the grievance held with the grievant or other employee shall not require the use of leave time.

~~(5)~~ ~~[(6)]~~ Both parties shall be given the opportunity to have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels.

(1)

(a) Except as provided in paragraph (d) of this subsection, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the second line supervisor.

(c) If the area supervisor or the division director is the first line supervisor, the request for review shall automatically be requested from the Ombudsman for the Office of Career and Technical Education.

(d) In accordance with Section 3(1) of this administrative regulation, if an act of the immediate supervisor was the basis for the grievance:

1. The immediate supervisor shall not investigate or issue findings or a decision; and
2. The grievance shall be investigated by the second line supervisor, with subsequent appeals available, as provided in subsections (2) through (6) of this section.

(2)

(a) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the second line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the ombudsman in the Office of Career and Technical Education.

(3) If the ombudsman is unable to mediate the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education or his or her designee for a final determination. The associate commissioner~~[executive director]~~, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) working days.

(4) Failure of supervisory or management personnel to respond within the prescribed time limits shall be grounds for the advancement of the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(5) An intermediate grievance level may be waived by written agreement of the parties.

Section 5. Incorporation by Reference.

(1) "KRS 156 Grievance Form~~[-151B]~~", 4/2024~~[revised 7/2008]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education~~[Office of Career and Technical Education]~~, 300 Sower Blvd., 5th Floor~~[500 Mero Street, 3rd Floor]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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).

*ROBIN FIELDS KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Chairperson*

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd G. 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 G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements governing employee grievances for certified and equivalent employees of the Office of Career and Technical Education.

(b) The necessity of this administrative regulation:

KRS 156.808(3)(t) requires the Kentucky Board of Education to promulgate administrative regulations governing employee grievances and complaints for certified and equivalent staff of the Office of Career and Technical Education.

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

This administrative regulation provides specific details governing the grievance process for certified and equivalent employees of the Office of Career and Technical Education required by 156.808.

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

This administrative regulation establishes specific details governing the grievance process for certified and equivalent employees of the Office of Career and Technical Education required by 156.808.

(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 makes changes to the facilitation of the grievance process through the Office of Career and Technical Education as an office within the Department of Education governed by the Kentucky Board of Education.

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

The initial promulgation of this regulation predates the Office of Career and Technical Education being included as an office within the Department of Education and it has not been amended since the Office of Career and Technical Education was moved from the Workforce Development Cabinet to the Department of Education.

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

The amendment will assist in the effective administration of the statutes by providing accurate details regarding the grievance process for certified and equivalent employees of the Office of Career and Technical Education.

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

The amendment will assist in the effective administration of the statutes by providing details regarding the grievance process for certified and equivalent staff in the Office of Career and Technical Education.

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

Certified and equivalent staff within the Office of Career and Technical Education will be affected by this administrative regulation.

(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:

There are no additional actions required by the Office of Career and Technical Education to comply with this administrative regulation amendment.

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

There are no additional costs associated with complying with this administrative regulation amendment.

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

The regulation provides an efficient and fair process for certified and equivalent staff to file and have grievances addressed consistent with KRS 156.808.

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

(a) Initially:

(b) On a continuing basis:

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

State generated funds.

(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:

There is no increase in fees or funding to implement this administrative regulation.

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

This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all certified and equivalent employees of the Office of Career and Technical Education.

FISCAL IMPACT STATEMENT

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

KRS 156.808

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Department of Education

(a) Estimate the following for the first year:

Expenditures:\$0.00

Revenues:\$0.00

Cost Savings:\$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures:\$0.00

Revenues:\$0.00

Cost Savings:\$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3):

The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures:\$0.00

Revenues:\$0.00

Cost Savings:\$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact:

The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion:

The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.