

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

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

RELATES TO: KRS Chapter 13B, 156.808, 156.820, 156.832, 344.030

STATUTORY AUTHORITY: KRS 156.070, 156.808(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(s) requires the Kentucky Board of Education to promulgate administrative regulations governing employee appeals, for all full-time and part-time certified or equivalent employees of the Office of Career and Technical Education. KRS 156.808(6)(a) requires the Kentucky Board of Education to promulgate administrative regulations to govern proceedings which provide for procedures to be utilized by the Kentucky Technical Education Personnel Board in the conduct of hearings. KRS 156.808(8) requires the Kentucky Board of Education to promulgate administrative regulations for certified and equivalent employees of the Office of Career and Technical Education that have been dismissed, demoted, suspended, or otherwise penalized for cause. This administrative regulation establishes the requirements for appeals and hearings for certified and equivalent employees of the Office of Career and Technical Education.

**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 founded in 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, 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 parties and approved by the hearing officer.
  - (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 may 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) Discovery may be taken in accordance with KRS 13B.080.
- (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) Written exceptions, and responses thereto, 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.
- (17 Ky.R. 746; eff. 10-14-1990; 27 Ky.R. 1881; 2444; eff. 3-19-2001; 28 Ky.R. 1206; eff. 1-14-2002; 35 Ky.R. 1871; 2237; eff. 5-1-2009; Cert eff. 6-28-2019; TAm eff. 11-10-2022; 50 Ky.R. 2308; eff. 8-20-2024.)

*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](mailto:regcomments@education.ky.gov).