

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

701 KAR 5:055. Removal hearing procedures.

RELATES TO: KRS 156.132

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.132 authorizes the Kentucky Board of Education to suspend or remove ~~[local board of education members,]~~ ~~superintendents,~~ and public school officers upon a finding of misconduct or certain other offenses. This administrative regulation establishes procedures to be followed prior to and during the evidentiary hearing regarding the charges brought for suspension or removal.

Section 1. Definition. "Officer being charged" or "officer charged" means a ~~[district board member,]~~ superintendent of schools~~],~~ or other public school officer who is charged with an offense under KRS 156.132.

Section 2. Preliminary Matters. Before the matter is submitted for final decision, the statement of charges may be amended or supplemented. If the amended or supplemented statement of charges presents new charges, the officer being charged shall be afforded a reasonable opportunity, and not less than twenty (20) days, to prepare his defense.

Section 3. Prehearing Procedures.

- (1) The testimony of a material witness may be taken by deposition if:
 - (a) The witness will be unavailable at the time and date of the scheduled hearing or the witness cannot be compelled to attend; and
 - (b) Written authorization of the hearing officer is provided or there is agreement of the parties.
- (2) If there is no agreement between the parties, the party requesting the deposition shall file a written request with the hearing officer stating:
 - (a) The name and address of the witness whose testimony is desired;
 - (b) The nature and materiality of the testimony; and
 - (c) The reasons why the witness will be unable or cannot be compelled to attend the hearing.
- (3) Upon a proper showing, the hearing officer may issue an interim order requiring the witness to appear and to testify by deposition.
- (4) The request for deposition shall be filed as soon as it becomes known that a witness will be unavailable at the time and date of the scheduled hearing. An objection shall be filed no more than three (3) days after the filing of the written request.
- (5) The cost of the deposition shall be paid by the party requesting the deposition.

Section 4. Hearing Procedures.

- (1) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B.
- (2) At the request of a party or on his own volition, the hearing officer may reschedule a hearing if there is good cause or the parties agree to reschedule the hearing.
- (3) The party seeking the continuance shall file with the hearing officer a written request stating the reason for the request or a statement indicating the agreement of the parties. If the request to reschedule is made by a party, the requesting party shall file the request at least ten (10) days prior to the scheduled hearing. An objection to the request shall be filed within three (3) days after the filing of the request.

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).

ROBBIE FLETCHER, Commissioner

SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: February 12, 2025

FILED WITH LRC: February 12, 2025 at 12:12 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held April 29, 2025 at 10 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. 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 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. 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 April 30, 2025. 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 hearing procedures to be implemented in the event of removal of a superintendent of schools or other public school officer pursuant to KRS 156.132.

(b) The necessity of this administrative regulation:

This administrative regulation provides due process procedures for those individuals subject to removal pursuant to KRS 156.132.

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

This administrative regulation establishes the hearing procedures to be implemented in the event of removal of a superintendent of schools or other public school officer pursuant to KRS 156.132.

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

This administrative regulation provides due process procedures for those individuals subject to removal pursuant to KRS 156.132.

(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 removes reference to “local board of education members” following amendment of KRS 156.132 in 2021.

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

The amendment removes reference to “local board of education members” following amendment of KRS 156.132 in 2021.

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

The amendment removes reference to “local board of education members” following amendment of KRS 156.132 in 2021.

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

The amendment removes reference to “local board of education members” following amendment of KRS 156.132 in 2021.

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

Local school districts, superintendents, and public school officials.

(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 additional action will be required as a result of the amendment.

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

Superintendents and public school officials subject to removal pursuant to KRS 156.132 and this administrative regulation may incur legal expenses if they choose to hire an attorney to represent them in a removal hearing.

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

The amendment removes reference to “local board of education members” following amendment of KRS 156.132 in 2021.

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

(a) Initially:

Costs to the agency are dependent upon the number of removal hearings that are conducted and the complexity of each hearing. Staff time and expenses are estimated at no less than \$15,000 per removal hearing.

(b) On a continuing basis:

Costs to the agency are dependent upon the number of removal hearings that are conducted and the complexity of each hearing. Staff time and expenses are estimated at no less than \$15,000 per removal hearing.

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

General 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:

No increase in fees or funding.

(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 is not applied. This administrative regulation applies equally to all removal hearings pursuant to KRS 156.132.

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 156.132 and 156.070.

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

Kentucky Board of Education, Department of Education.

(a) Estimate the following for the first year:

Expenditures:Costs to the agency are dependent upon the number of removal hearings that are conducted and the complexity of each hearing. Staff time and expenses are estimated at no less than \$15,000 per removal hearing.

Revenues:No revenue.

Cost Savings:No cost savings.

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

Costs to the agency are dependent upon the number of removal hearings that are conducted and the complexity of each hearing. Staff time and expenses are estimated at no less than \$15,000 per removal hearing. No difference in revenues or cost savings in subsequent years.

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

Local school districts.

(a) Estimate the following for the first year:

Expenditures:There are no expenditures associated with this regulation for local school districts.

Revenues:There are no revenues associated with this regulation for local school districts..

Cost Savings:There are no cost savings associated with this regulation for local school districts.

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

There are no expenditures, revenues, or cost savings associated with this regulation for local school districts.

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

Superintendents and public school officials.

(a) Estimate the following for the first year:

Expenditures:Superintendents and public school officials subject to removal pursuant to KRS 156.132 and this administrative regulation may incur legal expenses if they choose to hire an attorney to represent them in a removal hearing.

Revenues:There are no revenues associated with this regulation for superintendents and public school officials.

Cost Savings:There are no cost savings associated with this regulation for superintendents and public school officials.

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

No difference in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

Costs to the agency are dependent upon the number of removal hearings that are conducted and the complexity of each hearing. Staff time and expenses are estimated at no less than \$15,000 per removal hearing. No difference in revenues or cost savings in subsequent years.

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

Estimated minimum amount of staff time to carry out the requirements of KRS 156.132 and this administrative regulation for a removal hearing of minimal complexity.

(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 administrative regulation is not expected to have an overall negative or adverse major economic impact.

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

Superintendents and public school officials subject to removal pursuant to KRS 156.132 and this administrative regulation may incur legal expenses if they choose to hire an attorney to represent them in a removal hearing. However, they are not required to do so.