

### **31 KAR 6:010. State-based administrative complaint procedure.**

RELATES TO: KRS Chapter 13B, 117.015(1), 42 U.S.C. 15512

STATUTORY AUTHORITY: KRS 117.015(1)(a), 42 U.S.C. 15512(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15512, Section 402(a), requires the establishment of a state-based administrative complaint procedure to remedy grievances in elections for federal offices. This administrative regulation establishes an administrative complaint procedure to remedy grievances in elections for federal offices.

#### Section 1. Definitions.

- (1) "Board" means the State Board of Elections or their designee as defined in KRS 117.015 and 117.025.
- (2) "Complainant" means the person who files a complaint under this administrative regulation.
- (3) "Federal election" means a primary, general, or special election at which a federal office appears on the ballot.
- (4) "Presiding officer" means the person appointed by the executive director of the board to conduct a hearing on a complaint.
- (5) "Respondent" means any state or local election official whose actions are alleged, in a written complaint, to be in violation of Title III of the Help America Vote Act of 2002, 42 U.S.C. 15481.
- (6) "State or local election official" means the Secretary of State, the State Board of Elections, a county clerk, a county board of elections, or any officer, agent, or appointee thereof.
- (7) "Title III" means Title III of the Help America Vote Act of 2002, Pub.L. 107-252, codified at 42 U.S.C. 15481.

Section 2. Applicability. This administrative regulation shall be applicable to elections for federal office.

#### Section 3. Complaint Process.

- (1) Any person who believes there has been a violation of any provision of Title III by any election official may file a written complaint with the executive director of the board.
- (2) All complaints shall:
  - (a) Be limited to violations of the requirements placed upon the states by Title III, which are limited to claims for violations of the following:
    1. Standards for voting systems;
    2. Requirements for provisional voting and voting information; and
    3. Requirements for computerized statewide voter registration lists and for voters who register by mail.
  - (b) Be submitted in writing on the Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002, and signed by the complainant under oath or affirmation before an officer authorized to administer oaths.
  - (c) Include the full name, address, and telephone number of the complainant.
  - (d) Include a description of the alleged violation sufficient to apprise the board and the respondent of the nature and specific allegations of the complaint.
  - (e) Be sent by mail or by delivery to the Offices of the State Board of Elections at 140 Walnut Street, Frankfort, Kentucky 40601.
  - (f) Be filed within ninety (90) days of the alleged violation of Title III.

#### Section 4. Processing the Complaint and Response.

- (1) The executive director of the board may refuse to accept a complaint if the complaint does not comply with the requirements of Section 3 of this administrative regulation.
- (2) If a complaint does not comply with Section 3 of this administrative regulation, the executive director of the board shall, within three (3) days of receipt of the complaint, send the complainant a notice explaining the areas of noncompliance in the complaint.
- (3) The complainant shall correct a deficiency within seven (7) working days of receipt of notice of the deficiency. If the complainant fails to correct a deficiency or fails to state a violation of Title III, the board shall dismiss the complaint.
- (4) If a complaint complies with Section 3 of this administrative regulation and states on its face a Title III violation, the board shall accept the complaint and the complaint shall be deemed filed on the date of receipt at the offices of the board.
- (5) Upon receipt of a complaint, the board shall send a copy to the respondent along with a request for a response.
- (6) The respondent shall send a response to the board within ten (10) days of the date the respondent received notice from the board of the filed complaint.
- (7) Upon receipt of the respondent's response, the board shall within three (3) days, send the complainant a copy of the respondent's response and a notice explaining the complaint may be resolved informally by agreement of the parties or the complainant may request a hearing. The complainant shall have ten (10) days from the date the notice is received to request an informal resolution or a hearing.
- (8) The executive director of the board shall be responsible for arranging the date, time, and place for hearings, and appoint a qualified individual to serve as the presiding officer.
- (9) If at any time during the proceedings, the board believes that the person appointed by the executive director of the board is not performing his or her duties as presiding officer in the interest of justice and to ensure the fair administration of Title III, the board may withdraw the appointment of the presiding officer and appoint another qualified individual to serve as presiding officer.
- (10) The executive director shall send a notice of the identity of the presiding officer, time, date, and location of the hearing to the parties at least seven (7) days before the date scheduled for the hearing.
- (11) The board shall make a final determination of the complaint within ninety (90) days of the receipt of the complaint, unless the complainant agrees in writing to an extension.

Section 5. Consolidation. Upon its own motion, or upon motion of any party, the board or presiding officer may consolidate multiple complaints into a single proceeding if there exist common parties, common questions of law or fact, or both, or other circumstances as justice and the administration of the Act require.

Section 6. Severance. Upon its own motion, or upon motion of any party, the board or the presiding officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 7. Hearings.

- (1) Hearings shall be conducted in accordance with KRS Chapter 13B.
- (2) Hearings shall be recorded. A transcript of the hearing shall not be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcript at his or her own expense.
- (3) Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.
- (4) If any party fails, without good cause, to attend the hearing, they may be held in default and have a determination made against them.
- (5) All testimony shall be taken under oath or affirmation.
- (6) The complainant shall have the burden of proof.

Section 8. Presiding Officer's Findings of Fact, Conclusions of Law, and Recommended Order.

- (1) Within fourteen (14) days of the completion of the hearing, the presiding officer shall issue a findings of fact, conclusions of law, and recommended order to the board setting forth any findings of a past, present, or potential violation of Title III, if supported by the evidence presented, and a recommended remedy.
- (2) The recommended remedy shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law.
- (3) The recommended remedy shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system referred to in the complaint into compliance with Title III.

Section 9. Final Determination.

- (1) The board shall review the presiding officer's findings of fact, conclusions of law, and recommended order at the next scheduled meeting of the board.
- (2) The board may adopt the presiding officer's findings of fact, conclusions of law, and recommended order as its final determination or issue its own findings of fact, conclusions of law, and final determination based on the evidence presented.
- (3) The board shall issue a final determination within thirty (30) days of receipt of the recommended order or within ninety (90) days of receipt of the complaint, whichever is shorter, unless the complainant agrees in writing to an extension of time.

Section 10. Alternative Dispute Resolution.

- (1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of three (3) members of the board.
- (2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.
- (3) The review panel shall make its determination on the record of the hearing conducted under this administrative regulation and shall not conduct any further proceedings.
- (4) If the hearing was not conducted or completed, then the review panel shall conduct a hearing under this administrative regulation.

Section 11. Publication of Final Determinations. All final determinations shall be posted on the internet homepage of the board, <http://www.elect.ky.gov>, and retained in the permanent archival records of the board by attaching to the minutes of the monthly meeting of the board for the month the final determination was issued.

Section 12. Incorporation by Reference.

- (1) "Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002," SBE 21, December 2003, is incorporated by reference.
  - (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
- (30 Ky.R. 1881; 2134; eff. 4-12-2004; 36 Ky.R. 2110-M; 2176; eff. 6-4-2010; Crt eff. 3-6-2019.)