

## **701 KAR 5:090. Teacher disciplinary hearings.**

RELATES TO: KRS 161.770, 161.790

STATUTORY AUTHORITY: KRS 156.070, 161.770, 161.790(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.790(4) and 161.770 requires the commissioner of education to appoint an impartial three (3) member tribunal to conduct an administrative hearing and make the final determination on charges concerning a local school district's proposal to discipline or place on involuntary leave a teacher if the teacher gives timely notice of his or her intent to answer the charges. This administrative regulation establishes administrative and hearing procedures with respect to the tribunal process and identifies the required training for tribunal members designated to serve as tribunal members on an ongoing basis.

Section 1. Notification of Discipline or Involuntary Leave. A local school district superintendent proposing to discipline a teacher pursuant to KRS 161.790 other than private reprimand, or a board of education placing a teacher or superintendent on involuntary leave pursuant to KRS 161.770, shall immediately, after notice to the employee, transmit a copy of the notice of the action to the commissioner of education, along with advice as to the date of the receipt of the notice by the employee.

Section 2. Hearing Officer Qualifications. Upon notification from a teacher pursuant to KRS 161.790(3) of the teacher's intention to answer the charges against him or her, the commissioner shall appoint a hearing officer in accordance with KRS 161.790(4) who meets the following qualifications:

- (1) The hearing officer shall be an attorney licensed to practice law in the Commonwealth of Kentucky and in good standing with the Kentucky Bar Association;
- (2) The hearing officer shall complete biennial training as approved by the Kentucky Department of Education related to the employment of teachers;
- (3) The hearing officer shall complete biennial training as approved by the Kentucky Department of Education related to the professional code of ethics for Kentucky school certified personnel set forth in 16 KAR 1:020; and
- (4) The hearing officer shall meet the training requirements set forth in 40 KAR 5:010.

Section 3. Teacher and Administrator Tribunal Member Qualifications.

- (1) Beginning in 2019 and every four (4) years thereafter, the Kentucky Department of Education shall solicit applications to establish a pool of potential teacher or administrator tribunal members. Individuals who wish to be considered for the pool of potential teacher or administrator tribunal members shall apply using the Teacher and Administrator Tribunal Member Application. The Kentucky Department of Education shall select no more than twenty (20) potential teacher tribunal members for the pool using procedures developed by the Kentucky Department of Education for the receipt, review, and selection of applicants. The Kentucky Department of Education shall select no more than twenty (20) potential administrator tribunal members for the pool using procedures developed by the Kentucky Department of Education for the receipt, review, and selection of applicants.
- (2) To be a member of the pool of potential teacher tribunal members designated to serve as a teacher tribunal member on an ongoing basis, a person shall:
  - (a) Hold a valid teaching certificate issued by the Education Professional Standards Board and be in good standing; or
  - (b) Be retired and have held a teaching certificate issued by the Education Professional Standards Board that was not revoked or surrendered as a result of revocation proceedings.

(3) To be a member of the pool of potential administrator tribunal members designated to serve as an administrator tribunal member on an ongoing basis, a person shall:

- (a) Hold a valid teaching certificate for the performance of administrative duties issued by the Education Professional Standards Board and be in good standing; or
- (b) Be retired and have held a teaching certificate for the performance of administrative duties issued by the Education Professional Standards Board that was not revoked or surrendered as a result of revocation proceedings.

(4) Individuals selected for the pool of potential teacher or administrator tribunal members designated to serve as a teacher or administrator tribunal member on an ongoing basis shall complete training approved by the Kentucky Department of Education on the following topics at least once every four (4) years:

- (a) The hearing process;
- (b) The role of the tribunal;
- (c) The role of the hearing officer;
- (d) How to determine facts;
- (e) Fundamental fairness;
- (f) The law on teacher disciplinary actions set forth at KRS 161.790;
- (g) The professional code of ethics for Kentucky school certified personnel set forth in 16 KAR 1:020; and
- (h) The deliberative process.

(5) For attending training approved by the Kentucky Department of Education required to be a member of the pool of potential teacher or administrator tribunal members, a person shall receive a per diem of \$100 and reimbursement of travel expenses from the Department of Education.

#### Section 4. Expense Reimbursement.

(1) The local school district shall pay all travel expenses of the hearing officer tribunal member in accordance with 200 KAR 2:006.

(2) No later than the convening of the hearing, the local school district shall advise the teacher and administrator tribunal members how to claim their per diem and travel expenses.

#### Section 5. Conduct of Hearing.

(1) A hearing before the tribunal shall be conducted in accordance with KRS Chapter 13B.

(2) The tribunal shall be presented with the notification described in Section 1, which sets forth the charges for discipline or involuntary leave.

(3) The hearing officer shall instruct the tribunal regarding the burden of proof, including which party bears the burden of proof.

(4) If, for any reason and after testimony has commenced, a tribunal member becomes unavailable to complete the hearing of the evidence of both parties, an appropriate substitute tribunal member shall be appointed by the commissioner of education and provided by the school district with a written transcript of all prior proceedings at the hearing unless waived under subsection (5) of this section.

(5) A hearing may be concluded and a decision rendered by a two (2) member tribunal upon express agreement of both parties so long as one (1) of the two (2) tribunal members is a hearing officer member in accordance with Section 2 of this administrative regulation.

#### Section 6. Continuances.

(1)

(a) If, after a requested hearing has been scheduled by the commissioner of education or his or her designee, a continuance is requested by the teacher, the teacher shall

specifically and in writing waive the statutory hearing deadlines and any subsequent backpay award for the period of the requested continuance. A continuance initiated by the teacher shall not be granted without the appropriate waiver.

(b) If the continuance request was initiated by the school district, a waiver shall not be required.

(2) A continuance requested by the teacher may be granted for good cause shown, including pending criminal charges making it inadvisable for the employee to testify at an administrative hearing or late entry of an attorney into the case on behalf of the employee.

(3) A continuance requested by the school district, and not agreed to by the employee, may be granted upon documentation of good cause making it impossible or prejudicially impractical for the district to adequately present its case at the scheduled hearing.

(4) A request for continuance made prior to the three (3) member tribunal convening shall be submitted in writing to the hearing officer.

#### Section 7. Incorporation by Reference.

(1) The "Teacher and Administrator Tribunal Member Application", June 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(18 Ky.R. 217; eff. 9-6-1991; 23 Ky.R. 1425; 2466; eff. 12-5-1996; 29 Ky.R. 805; 1271; eff. 11-12-2002; Crt eff. 11-16-2018; 46 Ky.R. 249, 971, 1120; eff. 11-1-2019.)