

Agenda Book

EPSB Mission Statement:

The Education Professional Standards Board, in full collaboration and cooperation with its education partners, promotes high levels of student achievement by establishing and enforcing rigorous professional standards for preparation, certification, and responsible and ethical behavior of all professional educators in Kentucky.

EPSB Special Meeting Agenda

EPSB Offices

100 Airport Road, 3rd Floor, Conference Room A, Frankfort, KY 40601

September 14, 2015

Monday, September 14, 2015

9:00 AM EDT

Call to Order

Roll Call

Report of the Chair

A. Appointments to the EPSB Waiver Committee

B. Executive Director Search Update
(Dr. Mary John O’Hair)

Information/Discussion Item

16 KAR 1:030. Procedures for Certificate Revocation, Suspension, Reinstatement, and Reissuance, and Application Denial; Amendment, Notice of Intent

Adjournment

Next Regular EPSB Meeting:

October 12, 2015
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**EDUCATION PROFESSIONAL STANDARDS BOARD
STAFF NOTE**

Information/Discussion Item

Information Item:

Notice of Intent to Amend 16 KAR 1:030

Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial

Applicable Statutes and Regulation:

KRS 161.028(1), 161.120, 218A.010(5)

Applicable Goal:

Goal 3: Every credentialed educator exemplifies behaviors that maintain the dignity and integrity of the profession by adhering to established law and EPSB Code of Ethics.

Background:

16 KAR 1:030 is the regulation that governs procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial. The board has asked that the regulation be rewritten for clarity and efficiency.

Contact Person:

Mr. Jimmy Adams

Acting Executive Director

(502) 564-4606

E-mail: Jimmy.Adams@ky.gov

Date:

September 14, 2015

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TO: EPSB Board Members:

FROM: Michael Head 

RE: Proposed Draft of 16 KAR 1:030 to be reviewed at September 14 Special Meeting

DATE: August 13, 2015

* * * * *

I look forward to working with the Board at the special meeting on September 14, which is being held to put in final form your administrative hearings procedure regulation, 16 KAR 1:030 (Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial).

I am resending you the version of the regulation that the Regulation Writing Subcommittee endorses with three caveats ("Proposed Draft"). I also am sending you a copy of the current version of the regulation that is in effect ("Current Version"), as well as a copy of the version that your former Legal Director drafted ("Prior Draft"), which the subcommittee rejected.

In my remarks to the full Board on August 10, I highlighted the subcommittee's three caveats concerning the Proposed Draft. To help focus your discussion at your September 14 special meeting, your Acting Executive Director asked me to summarize these three caveats and the issues raised.

The subcommittee's three caveats are as follows:

- A majority of the subcommittee voted to include a provision in the Proposed Draft prohibiting anonymous complaints from the public.
- The subcommittee asked me to include a provision about noting discipline on certificates, but the provision as it now reads was not endorsed by a vote of the subcommittee.
- The subcommittee directed me to work with KEA counsel after the subcommittee's last meeting on July 28 to develop a provision concerning certificate holders' right to demand a hearing by a date certain.

For each of these caveats, there are arguments pro and con to be considered. Addressing each caveat separately, I will try to summarize those arguments as I understand them.

Anonymous Complaints:

In the Proposed Draft of the regulation, Section 2(2) reads, "No informal complaint shall be filed anonymously." A majority of the subcommittee voted to include this language.

The Board's statute, KRS 161.120(2)(c), allows it to "consider reports and information received from other sources." This language does not specify one way or the other whether anonymous

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complaints are permitted. In the opinion of the author of this memo, this is a matter that can and should be resolved in the Board's regulation.

The argument supporting anonymous informal complaints is that teachers and students' parents should be able to file complaints without fear of retaliation. Retaliation, in the case of teachers' complaints, could come from administrative officials and/or by fellow teachers; in the case of parents' complaints, from their children's teachers. Retaliation, it was argued, might be too subtle to address under the "whistleblower" law. Thus, some complaints would be filed that the Board would not otherwise receive without allowing anonymous complaints.

The fear of retaliation is driven by Open Records Law, which requires a written complaint—including the identity of the complainant—to be produced when an open records request is made. No Open Records Law exception allows redaction of the complainant's name from the document produced.

Several arguments were made against anonymous complaints. For instance, a complainant who wishes to remain anonymous should be able to find at least one individual who is insulated from, or does not fear the possibility of, retaliation. The insulated or fearless individual must locate evidence of the alleged violation independent the anonymous individual's testimony. But once that evidence is found, the insulated or fearless individual can file the informal complaint as the named complainant. In response, the argument was made that in some circumstances, there is no individual in whom a complainant could confide without fearing retaliation. To the contrary, an individual fearing retaliation could always orally communicate an allegation to the Board's Executive Director. The Executive Director could file an informal complaint if an investigation warranted it.

It also was argued that complainants should stand behind their complaints. Otherwise, individuals can file baseless complaints for malicious purposes without fear of repercussion. A malicious complainant could file anonymously knowing the Open Records Law would not prevent production of the unredacted complaint upon request even if no evidence is found supporting the complainant's allegations.

Mr. Adams reported that the Board received approximately 20 anonymous complaints per year. Information was not provided that analyzed the number of anonymous complaints that resulted in proven or admitted violations by certificate holders versus the number that were dismissed for lack of evidence.

Based on the arguments and information outlined, a majority of the subcommittee voted to recommend prohibiting anonymous complaints.

Disciplinary Notations on Certificates:

The subcommittee acknowledged that the full Board would need to discuss whether to place any disciplinary notation on certificates, and if so, for what duration the notation should remain.

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In Section 11(2), the Proposed Draft states,

A final order shall set forth the board's decision on whether the certificate, in print and in electronic form, shall bear a symbol signifying that the certificate holder, by a final order, was determined to have committed or admitted violations of the board's law.

The subcommittee discussed whether the symbol contemplated by the draft provision should be placed only on certificates that are suspended or revoked, and not on those whose certificate holders receive lesser sanctions.

A further question arose whether a certificate holder whose certificate is suspended should have a symbol on their certificate for a period of time longer than the suspension. The argument made was that the notation should be removed after a suspension has been served so the certificate holder's reputation and ability to seek employment is not permanently impaired.

The Board's past "flagging" policy is not the same as the symbol notation set forth in the Proposed Draft. Note this draft provision allows a symbol to be placed on a certificate only after a disciplinary action is final. The subcommittee acknowledged that the Board would still need to revisit whether the Board should publish information, especially to superintendents, about pending disciplinary actions without an Open Records request being filed.

Certificate Holder's Right to Request a Hearing:

In Section 13 of the Proposed Draft, two subsections were added to give a certificate applicant and a certificate holder the right to have a hearing set by a date certain. These provisions state,

- (3) If an applicant for a certificate requests a hearing pursuant to KRS 161.120(5)(a)(2), then the board shall:
 - (a) Issue a notice of administrative hearing if one has not been issued; and
 - (b) Set a hearing date or direct its legal staff to ask the hearing officer assigned to the administrative action to set a hearing date.

- (4) No less than one hundred eighty (180) days after the date a certificate holder files a rebuttal pursuant to KRS 161.120(2)(d), the certificate holder may request a hearing pursuant to KRS 161.120(5)(a)(1) or 161.120(5)(a)(3). If such a request for hearing is made, the board shall:
 - (a) Issue a notice of administrative hearing if one has not been issued; and
 - (b) Set a hearing date or direct its legal staff to ask the hearing officer assigned to the administrative action to set a hearing date.

The subcommittee asked me to draft these provisions based on a KEA counsel's oral request at the subcommittee's last meeting. I drafted these provisions revising language provided to me by KEA

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counsel. Because the subcommittee did not review this language, it recognized that the full Board should discuss whether to give certificate holders this right, and if so, the right's timing.

In the past, I have advised the Board to resist including a provision that allows an applicant or certificate holder the right to demand a hearing by a date certain only because there may be instances when the Board could not prepare for a hearing by the date requested. Although these instances may be very limited in number, the Board should not be forced either to dismiss a case or to go to a hearing when it is not prepared to do so.

Other alternatives are available to the Board. For instance, the regulation could grant applicants and certificate holders the right to demand that the Board issue a Notice of Hearing without granting the right to demand a hearing date. Under KRS 13B.050, only the agency can issue the Notice of Hearing, and there is no definite date by which a hearing must be held. Instead, the hearing is to be held "as soon as practicable." This is a flexible standard that the hearing officer would apply when an applicant or certificate holder asks to set a hearing date. Allowing the applicant and certificate holder to demand that the Board issue a Notice of Hearing would at least put the case before a neutral individual (the hearing officer) who would weigh the interests of both parties in deciding when to set a hearing date.

Other Issues with the Proposed Draft:

The Board should not interpret this memo to mean no other issues with the Proposed Draft exist. All Board members should feel free to raise any question they may have about the draft.

The Board's new Chair also asked me to prepare a chart showing the steps of the disciplinary case process that would provide a more visual representation of that process. Your Acting Executive Director and I will prepare that chart and distribute it to all the Board members before the September 14 special meeting.

**Proposed
Draft
of
16 KAR 1:030**

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1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Education Professional Standards Board

3 (Amendment)

4 **16 KAR 1:030. Procedures for certificate revocation, suspension, reinstatement and**
5 **reissuance, and application denial.**

6 RELATES TO: KRS 161.028(1), 161.120, 218A.010(5)

7 STATUTORY AUTHORITY: KRS 161.028(1), 161.175(2)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education
9 Professional Standards Board to establish standards and requirements for obtaining and
10 maintaining a teaching certificate. KRS 161.120 establishes procedures for disciplinary actions
11 relating to certificates. KRS 161.175(2) authorizes the Education Professional Standards Board
12 to promulgate administrative regulations requiring a teacher whose certificate has been
13 suspended or revoked by the Education Professional Standards Board because the teacher
14 engaged in misconduct involving the illegal use of controlled substances to submit to drug
15 testing. This administrative regulation identifies the conditions for initiating a disciplinary action
16 against a certificate and establishes procedures for certificate reinstatement, reissuance, and
17 application denial.

18 **Section 1. Definitions.** Terms in this regulation are defined as follows:

19 (1) An “assurance of voluntary compliance” is a resolution of an informal complaint
20 by which the certificate holder agrees to adhere in the future to a defined application of KRS
21 161.120.

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1 (2) The “board” is the Education Professional Standards Board.

2 (3) A "case file" is what the board’s staff creates when the board receives an informal
3 complaint. All documents in the board’s possession related to the informal complaint, including
4 the official record of the administrative hearing as defined by KRS 13B.130, is preserved in the
5 case file.

6 (4) A “certificate” is the document issued under KRS 161.010 to 161.100 to teachers
7 and other professional school personnel, and any certificate or license issued under any previous
8 law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of
9 pupil personnel, or other administrative, supervisory, or instructional employees.

10 (5) “The certificate holder” is the individual against whom an informal complaint is
11 filed.

12 (6) "Closing a case file" is what the board will vote to do if the board has not nor will
13 not issue a formal complaint against the certificate holder.

14 (7) A "final order" is any final action by the board to finally resolve the allegations of
15 an informal complaint, including a final order as defined by KRS 13B.010(6).

16 (8) A "formal complaint" is the document the board will issue when the board
17 initiates disciplinary action against a certificate under KRS 161.120.

18 (9) An "informal complaint" is a report of alleged conduct by a certificate holder for
19 which the board may take disciplinary action under KRS 161.120. For purposes of this
20 regulation, the informal complaint includes all accompanying materials filed with it.

21 (10) A "notice of administrative hearing" is defined by KRS 13B.050.

22 (11) “Redacted copy” and “redacted copies” means a copy or copies of original
23 documents with information that may identify the certificate holder and the complainant

1 redacted. Information that may identify the certificate holder and complainant includes, but is
2 not limited to, social security numbers, addresses, the names of victims of certificate holder's
3 alleged conduct, the names of other school personnel, the name of the superintendent, and the
4 name of the school district.

5 ~~Initiating Disciplinary Action Against a Certificate. The Education Professional Standards Board~~
6 ~~may initiate disciplinary action against a Kentucky teaching or administrative certificate upon~~
7 ~~receipt from any source of a report or complaint which contains allegations that an individual~~
8 ~~who holds a Kentucky teaching or administrative certificate has engaged in conduct listed in~~
9 ~~KRS 161.120(1).~~

10 **Section 2. Informal Complaints.** (1) Any individual or entity may file an informal
11 complaint concerning a certificate holder.

12 (2) No informal complaint shall be filed anonymously.

13 (3) The Executive Director of the board may file an informal complaint against a
14 certificate holder on behalf of the board.

15 (4) All informal complaints that concern the same facts and circumstances shall be
16 consolidated into a single case file.

17 (5) By filing an informal complaint, a superintendent satisfies the requirement in
18 KRS 161.120(2)(a) to file a report.

19 (6) Before filing an informal complaint concerning a certificate holder employed by
20 the superintendent's school district, the superintendent shall cause an investigation of the
21 allegations against the certificate holder to be initiated as soon as practicable after being made
22 aware of the event giving rise to the duty to report under KRS 161.120(2)(a).

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1 (7) The superintendent shall file an informal complaint when the school district's
2 investigation is complete or, if the school district's investigation is not complete at the time a
3 superintendent is required by KRS 161.120(2)(a) to submit a report to the board, the
4 superintendent's duty to report shall be based on the information in the superintendent's
5 possession at that time.

6 (8) The superintendent shall send to the board copies of all documents and records
7 relevant to the informal complaint received after filing the informal complaint.

8 (9) Informal complaints shall be mailed or hand-delivered to the board at 100 Airport
9 Road, 3rd Floor, Frankfort, Kentucky 40601, or, if made available by the board, may be
10 submitted electronically through the board's website, www.epsb.ky.gov.

11 ~~Section 2. Reinstatement and Reissuance of Certificate. (1)(a) A certificate that has been~~
12 ~~suspended by the Education Professional Standards Board shall not be reinstated until the~~
13 ~~certificate holder has met all conditions and requirements ordered by the Education Professional~~
14 ~~Standards Board.~~

15 ~~(b) — If a certificate lapses during a period of suspension, at the end of the suspension~~
16 ~~period and upon completion of all conditions and requirements ordered by the Education~~
17 ~~Professional Standards Board, the certificate holder shall apply for renewal of the certificate and~~
18 ~~shall meet all educational requirements for renewal of the certificate.~~

19 ~~(2) — An individual whose certificate has been revoked shall complete the "Application~~
20 ~~for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in~~
21 ~~16 KAR 2:010, prior to the reissuance of the certificate.~~

22 ~~(3) — The burden of proving suitability for reissuance of a revoked certificate shall rest~~
23 ~~on the applicant seeking reinstatement.~~

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1 ~~(4) — If reissuing a certificate, the Education Professional Standards Board may include~~
2 ~~terms and conditions that the board reasonably deems appropriate as a condition of reissuance in~~
3 ~~accordance with KRS 161.120(11)(b).~~

4 ~~(5) — An applicant for reissuance of a revoked certificate shall satisfy all current~~
5 ~~educational requirements for the certificate.~~

6 ~~(6) — (a) If a certificate is suspended or revoked because the certificate holder engaged~~
7 ~~in misconduct involving the illegal use of a controlled substance as defined in KRS 218A.010(5),~~
8 ~~in addition to conditions for reinstatement or reissuance, the certificate holder shall at the~~
9 ~~certificate holder's own expense provide written evidence that the certificate holder has~~
10 ~~submitted to a drug test administered by a drug testing facility approved by the Education~~
11 ~~Professional Standards Board within thirty (30) days of reinstatement or submission of an~~
12 ~~application for reissuance of the certificate.~~

13 ~~(b) — If the results of the drug test indicate drug use by the certificate holder, the~~
14 ~~certificate shall not be reinstated or reissued.~~

15 ~~(c) — The certificate holder shall arrange for the drug testing facility to send the results~~
16 ~~of the drug test directly to the Education Professional Standards Board.~~

17 ~~(d) — A drug test conducted under this subsection shall at a minimum test for the~~
18 ~~following controlled substances:~~

19 ~~1. Marijuana;~~

20 ~~2. Cocaine;~~

21 ~~3. Opiates;~~

22 ~~4. Amphetamines;~~

23 ~~5. Phencyclidine;~~

- 1 ~~6. Morphine;~~
- 2 ~~7. MDMA (Ecstasy);~~
- 3 ~~8. Methadone;~~
- 4 ~~9. Benzodiazepines;~~
- 5 ~~10. Barbiturates; and~~
- 6 ~~11. Oxycodone.~~

7 ~~(e) — 1. A certificate holder subject to the terms of this subsection may petition the~~
8 ~~Education Professional Standards Board to approve a drug testing facility of the certificate~~
9 ~~holder's choice.~~

- 10 ~~2. The petition shall contain the following information:~~
- 11 ~~a. The drug testing facility's name and location;~~
 - 12 ~~b. The name and telephone number for the director of the facility;~~
 - 13 ~~c. The method of test specimen collection;~~
 - 14 ~~d. The drug testing facility's method of assuring identity of the test subject;~~
 - 15 ~~e. Procedures for testing specimens, including forensic testing methods; and~~
 - 16 ~~f. Chain of custody protocols.~~

17 **Section 3. Certificate Holder Rebuttals to Informal Complaints.** (1) When an
18 informal complaint is received by the board, board staff may obtain from public sources or from
19 the reporting superintendent additional relevant information, which may be provided to the board
20 with the informal complaint.

21 (2) Informal complaints shall not be investigated without board authorization or, in
22 the case of emergency action under KRS 161.120(6), without the board chair's authorization.

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1 (3) An unredacted copy of the informal complaint or informal complaints in a case
2 file, and unredacted copies of any additional information related to the informal complaint that
3 will be submitted to the board with the case file, shall be mailed by certified mail to the
4 certificate holder's last known home address on file with the board or, if the informal complaint
5 was filed by a superintendent, to the certificate holder's home address provided by the
6 superintendent.

7 (4) If an informal complaint is filed by a superintendent, the mailing to the certificate
8 holder required by subsection 3 of this section shall occur after the school district's investigation
9 is complete, unless the Board votes that the mailing to the certificate holder is to occur sooner.

10 (5) The certificate holder may file with the board a rebuttal to the informal complaint
11 and to the additional information the certificate holder receives with the informal complaint.

12 (6) The rebuttal shall be mailed or hand-delivered to the board at 100 Airport Road,
13 3rd Floor, Frankfort, Kentucky 40601, or, if made available by the board, may be submitted
14 electronically through the board's website, www.epsb.ky.gov.

15 (7) The rebuttal shall be received at, or submitted electronically to, the board offices
16 by close of the business day thirty (30) days from the certificate holder's receipt of the informal
17 complaint.

18 ~~Denial of Application for a Certificate. If the Education Professional Standards Board denies an~~
19 ~~individual's application for a Kentucky teaching or administrative certificate pursuant to this~~
20 ~~administrative regulation, the individual may file an appeal in accordance with KRS~~
21 ~~161.120(5)(a)2.~~

1 **Section 4. Action on Informal Complaints.** (1) An informal complaint whose

2 allegations are not within the board's jurisdiction under KRS 161.120 may be rejected without
3 board action.

4 (2) When an informal complaint is rejected for lack of jurisdiction, the complainant
5 shall be mailed written notification of the rejection.

6 (3) An informal complaint for which the board has jurisdiction under KRS 161.120
7 shall be submitted for action at a regular meeting of the board no later than the second regular
8 meeting after expiration of the time for the certificate holder to file a rebuttal.

9 (4) When an informal complaint is submitted for action, the board shall receive:

10 (a) A redacted copy of the informal complaint or informal complaints in the case file;

11 (b) Redacted copies of the certificate holder's rebuttal, if one has been timely filed,
12 and materials that accompanied it;

13 (c) Redacted copies of any additional information obtained by board staff that were
14 sent to the certificate holder;

15 (d) A redacted statement of the facts and law prepared by the board's legal staff that
16 complies, to the extent possible, with KRS 13B.050(3) and (4); and

17 (e) The board legal staff's recommended action.

18 (5) When presented with an informal complaint or informal complaints, the board
19 shall vote to take one or more of the following actions:

20 (a) Close the case file and take no further action on the informal complaint or
21 informal complaints against the certificate holder.

22 (b) Defer further action on the informal complaint until the board's next regular
23 meeting.

1 (c) Authorize an investigation or additional investigation of the allegations in the
2 informal complaint or informal complaints.

3 (d) Authorize informal settlement negotiations with the certificate holder.

4 (e) Issue a formal complaint against the certificate holder.

5 (f) Issue an emergency order as provided in Section 9 of this regulation.

6 (g) Issue a notice of administrative hearing in compliance with KRS 13B.050.

7 (h) Adopt and approve a settlement agreement or a consent agreement with the
8 certificate holder.

9 (i) Accept an assurance of voluntary compliance from the certificate holder.

10 (j) Issue a written admonishment to the certificate holder in accordance with KRS
11 161.120(4).

12 (6) If the board votes to investigate or defer taking action on an informal complaint,
13 the case file shall be brought back before the board at its next regular meeting. At that meeting,
14 the board shall vote to take one of the actions set forth in subsection (4) of this section.

15 (7) The board shall send the certificate holder written notification of its action.

16 **Section 5. Investigations, Investigation Reports, and Action by the Board.** (1) All
17 investigations of informal complaints shall be initiated by action of the board.

18 (2) An investigation shall be limited to circumstances reasonably related to the
19 allegations in the informal complaint.

20 (3) The investigation shall be performed by a contract investigator or a board
21 employee who is not the board's legal representative concerning the allegations in the informal
22 complaint.

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1 (4) The investigator shall prepare a written report of the results of the investigation,
2 which shall be filed in the case file for the informal complaint.

3 (5) When it is filed, the board shall mail a copy of the investigator's written report to
4 the certificate holder.

5 (a) The board's legal staff may withhold the report or redact the copy mailed to the
6 certificate holder in order to protect work product and privileged, protected, or confidential
7 information.

8 (b) The certificate holder may petition the board in writing to produce to the
9 certificate holder an unredacted copy of the investigation report.

10 (c) If the certificate holder petitions the board to receive an unredacted copy of the
11 investigation report, the board shall send the certificate holder written notification of its decision.

12 (6) The case file shall be brought back before the board at a regular meeting no later
13 than the second regular meeting after the investigation report is filed. At that regular meeting,
14 the board shall vote to take one or more of the following actions:

15 (a) Close the case file and take no further action on the informal complaint or
16 informal complaints against the certificate holder.

17 (b) Defer further action on the informal complaint or informal complaints until the
18 board's next regular meeting.

19 (c) Authorize additional investigation.

20 (d) Authorize informal settlement negotiations with the certificate holder.

21 (e) Issue a formal complaint against the certificate holder.

22 (f) Issue an emergency order as provided in Section 9 of this regulation.

23 (g) Issue a notice of administrative hearing in compliance with KRS 13B.050.

1 (h) Adopt and approve a settlement agreement or a consent agreement with the
2 certificate holder.

3 (i) Accept an assurance of voluntary compliance from the certificate holder.

4 (j) Issue a written admonishment to the certificate holder in accordance with KRS
5 161.120(4).

6 (k) Dismiss a formal complaint the board may have issued against the certificate
7 holder.

8 (7) In the event the investigator discovers evidence that may lead to additional
9 charges under KRS 161.120, the investigator shall not conduct an investigation of the new
10 potential charges unless the board both files an informal complaint with new allegations and
11 authorizes an investigation of those allegations.

12 **Section 6. Formal Complaint and Notice of Administrative Hearing.** (1) If the board
13 votes to take action pursuant to KRS 161.120, the board shall issue a formal complaint against a
14 certificate holder.

15 (2) The formal complaint shall comply with KRS 13B.050(3)(d) and (e).

16 (3) The formal complaint shall include the disposition of the charges, including
17 penalties, that is sought by the board.

18 (4) If the board issues a formal complaint, the board shall:

19 (a) Direct its legal staff to initiate informal settlement negotiations under Section 7 of
20 this regulation; or,

21 (b) Issue a notice of administrative hearing in compliance with KRS 13B.050.

22 **Section 7. Informal Settlement Procedures.** (1) If the board votes to initiate informal
23 settlement negotiations with the certificate holder, the board shall issue a formal complaint,

1 which subsequently may be amended by the board if the charges in the formal complaint are not
2 settled or dismissed.

3 (2) If the board votes to initiate informal settlement negotiations with the certificate
4 holder, the board also shall decide the terms of settlement that shall be offered to the certificate
5 holder.

6 (3) A copy of the formal complaint shall be provided to the certificate holder when
7 informal settlement negotiations are initiated.

8 (4) If the board's legal staff rejects a certificate holder's proposed settlement, the
9 certificate holder may petition the board to accept alternate terms of settlement or resolution as
10 follows:

11 (a) The certificate holder shall file with the board a proposed settlement agreement or
12 consent agreement and a written request to submit the proposed agreement to the board for its
13 consideration.

14 (b) A redacted copy of the certificate holder's proposed settlement agreement or
15 consent agreement shall be presented to the board for consideration no later than the second
16 regular meeting after the board receives the written request.

17 (5) With the certificate holder's agreement, the board may vote to submit a case file
18 to a mediator agreed upon by the parties.

19 (a) The board's executive director, legal director, or legal staff may act as the board's
20 representative at the mediation.

21 (b) Settlement or consent agreements to which the certificate holder agrees during
22 mediation shall be submitted to the board for consideration no later than the second regular
23 meeting after the settlement or consent agreement is signed by the parties.

1 (6) A settlement agreement or a consent agreement shall not be effective until
2 approved by the full board.

3 **Section 8. Procedures for Denying Applications for a Certificate.** (1) If the board
4 denies an application for a certificate, the board promptly shall send notification of the denial to
5 the applicant.

6 (2) The notification of denial shall be sent to the applicant by certified mail, return
7 receipt requested, to the last known address of the applicant on file with the board.

8 (3) If a certificate applicant does not file a request for hearing with the board within
9 thirty (30) days of receiving the denial notification, the board shall deny any subsequent request
10 for a hearing.

11 **Section 9. Emergency Orders and Emergency Hearings.** (1) If there is evidence to
12 believe a certificate holder has engaged in conduct that constitutes an immediate danger to the
13 public health, safety, or welfare for which the board may take action under KRS 161.120, the
14 board or the board chair may issue an emergency order designed to stop, prevent, or avoid the
15 immediate danger.

16 (2) The content of the emergency order shall satisfy the requirements of KRS
17 13B.125(2).

18 (3) The emergency order shall be served as required by KRS 13B.125(2).

19 (4) The emergency order shall be effective as provided by KRS 13B.125(2).

20 (5) The certificate holder may request an emergency hearing as provided by KRS
21 13B.125(3).

1 (6) If the certificate holder requests an emergency hearing, the board shall issue an
2 emergency notice of administrative hearing and hold an emergency hearing in accordance with
3 KRS 13B.125.

4 (7) As soon as practicable after the board or the board's chair issues an emergency
5 order, the board shall issue a formal complaint and a notice of administrative hearing based on
6 the conduct that is the subject of the emergency order.

7 **Section 10. Administrative Hearings.** (1) If a certificate holder fails to request a hearing
8 as required by KRS 161.120(5)(a)(3), the board shall deny a subsequent request for hearing.

9 (2) When a hearing is required by KRS 161.120(4) and (5), and any time the board
10 votes to initiate an administrative hearing, the board shall issue a formal complaint and a notice
11 of administrative hearing that together comply with KRS 13B.050.

12 (3) If the board issues a notice of administrative hearing, the board shall vote whether
13 a hearing shall be conducted before the full board, a panel of three members of the board, or a
14 person appointed as hearing officer pursuant to KRS 13B.030(1).

15 **Section 11. Final Orders.** (1) A final order of the board that complies with the
16 requirements of KRS 13B.120 shall be issued to resolve all informal complaints over which the
17 board has jurisdiction under KRS 161.120.

18 (2) A final order shall set forth the board's decision on whether the certificate, in
19 print and in electronic form, shall bear a symbol signifying that the certificate holder, by a final
20 order, was determined to have committed or admitted violations of the board's law.

21 **Section 12. Appeals.** An appeal of any final order of the board shall be filed in the
22 Franklin Circuit Court as provided in KRS 13B.140 and KRS 23A.010.

1 **Section 13. Right to Petition the Board.** (1) An applicant for a certificate or a certificate
2 holder may petition the board in writing at any time to close a case file, dismiss a charge, issue a
3 notice of administrative hearing, ask a hearing officer to set an administrative action for hearing,
4 or take any other action that is permitted by law.

5 (2) Petitions filed pursuant to subsection (1) of this section shall be considered by the
6 board no later than the second regular meeting after the board receives the petition.

7 (3) If an applicant for a certificate requests a hearing pursuant to KRS
8 161.120(5)(a)(2), then the board shall:

9 (a) Issue a notice of administrative hearing if one has not been issued; and

10 (b) Set a hearing date or direct its legal staff to ask the hearing officer assigned to the
11 administrative action to set a hearing date.

12 (4) No less than one hundred eighty (180) days after the date a certificate holder files
13 a rebuttal pursuant to KRS 161.120(2)(d), the certificate holder may request a hearing pursuant
14 to KRS 161.120(5)(a)(1) or 161.120(5)(a)(3). If such a request for hearing is made, the board
15 shall:

16 (a) Issue a notice of administrative hearing if one has not been issued; and

17 (b) Set a hearing date or direct its legal staff to ask the hearing officer assigned to the
18 administrative action to set a hearing date.

19 (5) The certificate holder's petition may include a request to be heard in person
20 before the board.

21 (6) The board can refuse to consider the certificate holder's petition or decide the
22 merits of the petition without hearing from the certificate holder in person if, in its discretion, the

1 board believes it has adequately addressed the petition previously or if the board believes it can
2 adequately address the petition without hearing from the certificate holder in person.

3 **Section 14. Service, Mailing, and Production.** (1) Unless otherwise provided by law or
4 this regulation, all documents that are to be served, mailed, or produced to the certificate holder
5 shall be mailed by regular mail through the United States Postal Service to the certificate
6 holder's last known home address on file with the board or, if a superintendent filed the informal
7 complaint, to the home address provided by the superintendent.

8 (2) The certificate holder can waive the use of the United States Postal Service as
9 required in this section by providing the board with a written waiver and an email address that
10 the board thereafter shall use in lieu of mail through the United States Postal Service, unless
11 otherwise required by law.

12 **Section 15. Reinstatement and Reissuance of Certificate.** (1)(a) A certificate that has
13 been suspended by the Education Professional Standards Board shall not be reinstated until the
14 certificate holder has met all conditions and requirements ordered by the Education Professional
15 Standards Board.

16 (b) If a certificate lapses during a period of suspension, at the end of the suspension
17 period and upon completion of all conditions and requirements ordered by the Education
18 Professional Standards Board, the certificate holder shall apply for renewal of the certificate and
19 shall meet all educational requirements for renewal of the certificate.

20 (2) An individual whose certificate has been revoked shall complete the "Application
21 for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in
22 16 KAR 2:010, prior to the reissuance of the certificate.

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1 (3) The burden of proving suitability for reissuance of a revoked certificate shall rest
2 on the applicant seeking reinstatement.

3 (4) If reissuing a certificate, the Education Professional Standards Board may include
4 terms and conditions that the board reasonably deems appropriate as a condition of reissuance in
5 accordance with KRS 161.120(11)(b).

6 (5) An applicant for reissuance of a revoked certificate shall satisfy all current
7 educational requirements for the certificate.

8 (6) (a) If a certificate is suspended or revoked because the certificate holder engaged
9 in misconduct involving the illegal use of a controlled substance as defined in KRS 218A.010(5),
10 in addition to conditions for reinstatement or reissuance, the certificate holder shall at the
11 certificate holder's own expense provide written evidence that the certificate holder has
12 submitted to a drug test administered by a drug testing facility approved by the Education
13 Professional Standards Board within thirty (30) days of reinstatement or submission of an
14 application for reissuance of the certificate.

15 (b) If the results of the drug test indicate drug use by the certificate holder, the
16 certificate shall not be reinstated or reissued.

17 (c) The certificate holder shall arrange for the drug testing facility to send the results
18 of the drug test directly to the Education Professional Standards Board.

19 (d) A drug test conducted under this subsection shall at a minimum test for the
20 following controlled substances:

21 1. Marijuana;

22 2. Cocaine;

23 3. Opiates;

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- 1 4. Amphetamines;
- 2 5. Phencyclidine;
- 3 6. Morphine;
- 4 7. MDMA (Ecstasy);
- 5 8. Methadone;
- 6 9. Benzodiazepines;
- 7 10. Barbiturates; and
- 8 11. Oxycodone.

9 (e) 1. A certificate holder subject to the terms of this subsection may petition the
10 Education Professional Standards Board to approve a drug testing facility of the certificate
11 holder's choice.

- 12 2. The petition shall contain the following information:
- 13 a. The drug testing facility's name and location;
- 14 b. The name and telephone number for the director of the facility;
- 15 c. The method of test specimen collection;
- 16 d. The drug testing facility's method of assuring identity of the test subject;
- 17 e. Procedures for testing specimens, including forensic testing methods; and
- 18 f. Chain of custody protocols.

19 (19 Ky.R. 1264; Am. 1599; 1751; eff. 2-4-93; 20 Ky.R. 633; eff. 11-4-93; 23 Ky.R. 3617; 4124;
20 eff. 6-16-97; recodified from 704 KAR 20:585, 7-2-2002; 33 Ky.R. 3423; 34 Ky.R. 9; eff. 7-19-
21 2007.)

**Current
Version
of
16 KAR 1:030**

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16 KAR 1:030. Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial.

RELATES TO: KRS 161.028(1), 161.120, 218A.010(5)

STATUTORY AUTHORITY: KRS 161.028(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring a teacher whose certificate has been suspended or revoked by the Education Professional Standards Board because the teacher engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. This administrative regulation identifies the conditions for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Initiating Disciplinary Action Against a Certificate. The Education Professional Standards Board may initiate disciplinary action against a Kentucky teaching or administrative certificate upon receipt from any source of a report or complaint which contains allegations that an individual who holds a Kentucky teaching or administrative certificate has engaged in conduct listed in KRS 161.120(1).

Section 2. Reinstatement and Reissuance of Certificate. (1)(a) A certificate that has been suspended by the Education Professional Standards Board shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the Education Professional Standards Board.

(b) If a certificate lapses during a period of suspension, at the end of the suspension period and upon completion of all conditions and requirements ordered by the Education Professional Standards Board, the certificate holder shall apply for renewal of the certificate and shall meet all educational requirements for renewal of the certificate.

(2) An individual whose certificate has been revoked shall complete the "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010, prior to the reissuance of the certificate.

(3) The burden of proving suitability for reissuance of a revoked certificate shall rest on the applicant seeking reinstatement.

(4) If reissuing a certificate, the Education Professional Standards Board may include terms and conditions that the board reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(11)(b).

(5) An applicant for reissuance of a revoked certificate shall satisfy all current educational requirements for the certificate.

(6)(a) If a certificate is suspended or revoked because the certificate holder engaged in misconduct involving the illegal use of a controlled substance as defined in KRS 218A.010(5), in addition to conditions for reinstatement or reissuance, the certificate holder shall at the certificate holder's own expense provide written evidence that the certificate holder has submitted to a drug test administered by a drug testing facility approved by the Education Professional Standards Board within thirty (30) days of reinstatement or submission of an application for reissuance of the certificate.

(b) If the results of the drug test indicate drug use by the certificate holder, the certificate shall not be reinstated or reissued.

(c) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the Education Professional Standards Board.

(d) A drug test conducted under this subsection shall at a minimum test for the following controlled substances:

1. Marijuana;
2. Cocaine;
3. Opiates;
4. Amphetamines;
5. Phencyclidene;
6. Morphine;
7. MDMA (Ecstasy);
8. Methadone;
9. Benzodiazepines;
10. Barbiturates; and
11. Oxycodone.

(e)1. A certificate holder subject to the terms of this subsection may petition the Education Professional Standards Board to approve a drug testing facility of the certificate holder's choice.

2. The petition shall contain the following information:

- a. The drug testing facility's name and location;
- b. The name and telephone number for the director of the facility;
- c. The method of test specimen collection;
- d. The drug testing facility's method of assuring identity of the test subject;
- e. Procedures for testing specimens, including forensic testing methods; and
- f. Chain of custody protocols.

Section 3. Denial of Application for a Certificate. If the Education Professional Standards Board denies an individual's application for a Kentucky teaching or administrative certificate pursuant to this administrative regulation, the individual may file an appeal in accordance with KRS 161.120(5)(a)2. (19 Ky.R. 1264; Am. 1599; 1751; eff. 2-4-93; 20 Ky.R. 633; eff. 11-4-93; 23 Ky.R. 3617; 4124; eff. 6-16-97; recodified from 704 KAR 20:585, 7-2-2002; 33 Ky.R. 3423; 34 Ky.R. 9; eff. 7-19-2007.)

**Prior
Draft
of
16 KAR 1:030**

1 **16 KAR 1:030. Procedures for certificate revocation, suspension, reinstatement and**
2 **reissuance, and application denial.**

3 RELATES TO: KRS 161.028(1), 161.120, 218A.010(5)

4 STATUTORY AUTHORITY: KRS 161.028(1), 161.175(2)

5 NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education
6 Professional Standards Board to establish standards and requirements for obtaining and
7 maintaining a teaching certificate. KRS 161.175(2) authorizes the Education Professional
8 Standards Board to promulgate administrative regulations requiring a teacher whose certificate
9 has been suspended or revoked by the Education Professional Standards Board because the
10 teacher engaged in misconduct involving the illegal use of controlled substances to submit to
11 drug testing. This administrative regulation identifies the conditions for initiating a disciplinary
12 action against a teaching or administrative certificate and establishes procedures for certificate
13 reinstatement, reissuance, and application denial.

14 Section 1. Initiating Disciplinary Action Against a Certificate. (1) The Education
15 Professional Standards Board may initiate disciplinary action against a Kentucky teaching or
16 administrative certificate upon receipt from any source of a report or complaint which contains
17 allegations that an individual who holds a Kentucky teaching or administrative certificate has
18 engaged in conduct listed in KRS 161.120(1).

19 (2) The report or complaint shall be reviewed by a committee of the Education
20 Professional Standards Board. The committee shall consist of three teacher representatives of the
21 Education Professional Standards Board who shall determine whether to initiate a disciplinary
22 action.

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1 (32) Upon initiating a disciplinary action against a Kentucky teaching or administrative
2 certificate, the Education Professional Standards Board shall send a copy of the report or
3 complaint to the certificate holder.

4 (43) The certificate holder shall have thirty (30) days from receipt of the report or
5 complaint to submit a written rebuttal to the allegations.

6 (54) At the conclusion of the thirty (30) day rebuttal period or upon receipt of the
7 rebuttal, whichever occurs first, the complaint or report shall be prepared for initial review by the
8 Education Professional Standards Board at its next regularly scheduled meeting.

9 (65) At the initial review of the disciplinary action, the Education Professional Standards
10 Board shall review a summary of the complaint or report and a copy of the rebuttal. The
11 summary and the rebuttal shall be redacted to remove proper names of persons and places to
12 ensure the certificate holder's confidentiality during the initial review.

13 (76) At the conclusion of the initial review, the Education Professional Standards Board
14 may take the following actions:

15 (a) Defer consideration of the disciplinary case until a future meeting for further
16 information;

17 (b) Dismiss the disciplinary case;

18 (c) Defer consideration of disciplinary case until a future meeting to give the certificate
19 holder an opportunity to complete remedial training or counseling in exchange for a dismissal of
20 the disciplinary case;

21 (d) Admonish the certificate-holder in accordance with KRS 161.120(4); or

22 (e) Order an investigation into the allegations found in the complaint or report.

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1 (87) If other allegations of misconduct arise during the investigation into the allegations
2 found in the complaint or report, they may be investigated without further action by the
3 Education Professional Standards Board.

4 (98) If the Education Professional Standards Board orders an investigation into the
5 allegations, the investigation must be completed within ninety (90) days. If the investigation is
6 not completed within ninety (90) days, the case must be brought back before the Education
7 Professional Standards Board with a memo explaining why the investigation has not been
8 completed, and requesting an extension of time to complete the investigation.

9 (10) At the conclusion of the investigation:

10 (a) If there is no credible evidence that the allegations of misconduct occurred, the
11 disciplinary case shall be presented to the Education Professional Standards Board at its next
12 regularly scheduled meeting to be dismissed; or

13 (b) If there is credible evidence that an individual who holds a Kentucky teaching or
14 administrative certificate has engaged in conduct listed in KRS 161.120(1), the disciplinary case
15 shall be prepared for a hearing in accordance with KRS 161.120 (5)(a).

16 (c) The respondent may make a written request for a hearing. Education Professional
17 Standards Board Legal Staff must prepare and file administrative charges within twenty (20)
18 days of the receipt of the request. If the investigation is not completed, the charges must be filed
19 within twenty (20) days of the conclusion of the investigation.

20 Section 2. Reinstatement and Reissuance of Certificate. (1)(a) A certificate that has been
21 suspended by the Education Professional Standards Board shall not be reinstated until the
22 certificate holder has met all conditions and requirements ordered by the Education Professional
23 Standards Board.

1 (b) If a certificate lapses during a period of suspension, at the end of the suspension
2 period and upon completion of all conditions and requirements ordered by the Education
3 Professional Standards Board, the certificate holder shall apply for renewal of the certificate and
4 shall meet all educational requirements for renewal of the certificate.

5 (2) An individual whose certificate has been revoked shall complete the Form CA-1,
6 ["Application for Kentucky Certification or Change in Salary Rank", Form TC-1,] incorporated
7 by reference in 16 KAR 2:010, and pay all applicable fees in accordance with 16 KAR 4:040
8 prior to the reissuance of the certificate.

9 (3) The burden of proving suitability for reissuance of a revoked certificate shall rest on
10 the applicant seeking reinstatement.

11 (4) If reissuing a certificate, the Education Professional Standards Board may include
12 terms and conditions that the board reasonably deems appropriate as a condition of reissuance in
13 accordance with KRS 161.120(11)(b).

14 (5) An applicant for reissuance of a revoked certificate shall satisfy all current
15 educational requirements for the certificate.

16 (6)(a) If a certificate is suspended or revoked because the certificate holder engaged in
17 misconduct involving the illegal use of a controlled substance as defined in KRS 218A.010(5), in
18 addition to conditions for reinstatement or reissuance, the certificate holder shall at the certificate
19 holder's own expense provide written evidence that the certificate holder has submitted to a drug
20 test administered by a drug testing facility approved by the Education Professional Standards
21 Board within thirty (30) days of reinstatement or submission of an application for reissuance of
22 the certificate.

1 (b) If the results of the drug test indicate drug use by the certificate
2 shall not be reinstated or reissued.

3 (c) The certificate holder shall arrange for the drug testing facility to send the results of
4 the drug test directly to the Education Professional Standards Board.

5 (d) A drug test conducted under this subsection shall at a minimum test for the following
6 controlled substances:

7 1. Marijuana;

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15 9. Benzodiazepines;

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18 (e)1. A certificate holder subject to the terms of this subsection may petition the
19 Education Professional Standards Board to approve a drug testing facility of the certificate
20 holder's choice.

21 2. The petition shall contain the following information:

22 a. The drug testing facility's name and location;

23 b. The name and telephone number for the director of the facility;

- 1 c. The method of test specimen collection;
- 2 d. The drug testing facility's method of assuring identity of the test subject;
- 3 e. Procedures for testing specimens, including forensic testing methods; and
- 4 f. Chain of custody protocols.

5 Section 3. Denial of Application for a Certificate. If the Education Professional Standards
6 Board denies an individual's application for a Kentucky teaching or administrative certificate
7 pursuant to this administrative regulation, the individual may file an appeal in accordance with
8 KRS 161.120(5)(a)2.

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