

Education Professional Standards Board

PROCEDURES RELATING TO EPSB ACTION ON A CERTIFICATE HOLDER'S CERTIFICATION

Effective: July 15, 2024

Section 1. Purpose

The Education Professional Standards Board (“EPSB”) has the authority to take action upon any certificate or license issued under KRS 161.010 to KRS 161.100 for any of the reasons set forth in KRS 161.120(1). The EPSB is charged by statute with the vitally important public trust of administering a system of professional standards that will ensure that Kentucky school children receive a quality education from well-qualified professionals. The EPSB may take action against a certificate holder’s certificate in an effort to either ensure that a certificate holder has an understanding of a certificate holder’s professional duties and responsibilities; and/or protect students, parents of students, school personnel, or school officials. 16 KAR 1:030. The EPSB may initiate any combination of the actions set forth below. KRS 161.120 and KRS 161.028.¹

Section 2. Complaints and Reports

The EPSB receives reports or complaints against a certificate holder or certificate holders alleging a violation or violations of KRS 161.120(1) from superintendents, under KRS 161.120(3)(a), and from other sources under KRS 161.120(3)(d). Complaints may be made by any person, organization, or entity provided that they are in writing and signed by the person or representative of the organization or entity offering the complaint. An electronic signature will satisfy the requirement of a signed complaint. 16 KAR 1:030.

I. Intake

- A. Superintendents of local school districts have a duty, pursuant to KRS 161.120(3), to file written reports with the EPSB that contain the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct that might reasonably warrant action against a certificate holder’s certificate under KRS 161.120(1). Complaint submissions shall be made in the online complaint portal (KECS) and will not be reviewed until the superintendent or his/her designee indicates the complaint contains all of the information in the possession of the district, and is complete. Failure to submit a complete report within the thirty (30) calendar days may result in action against the superintendent’s certificate pursuant to KRS 161.120(1)(j).
- B. A filing of the complete complaint begins the disciplinary process.
- C. The EPSB may consider reports or complaints from any other source, including but not limited to parents/guardians, certificate holders, media postings, and other

¹ To the extent the procedures are inconsistent with the statutory or regulatory language, the statutes and regulations control.

government entities such as the Attorney General's Office, Office of Education Accountability, and the Cabinet for Health and Family Services. Other source Complaints should be sent by mail or email and shall be signed by the reporting source. Anonymous complaints will not be accepted. The certificate holder that is the subject of the complaint will receive a complete copy of the complainant's signed complaint.

D. When to Report

- i. A superintendent shall submit a report to the EPSB within 30 calendar days of the event giving rise to the duty to report. KRS 161.120(3)(a);
 1. If additional information is obtained by the superintendent after the initial report, the superintendent shall supplement the report. KRS 161.120(3);
- ii. A superintendent's duty to report includes reporting those convictions committed by a certificate holder that occurred prior to the date a certificate holder's certificate was issued. KRS 161.120(3)(b);
 1. If the event giving rise to the duty to report relates to a certificate holder's criminal conviction, then the superintendent must submit a report to the EPSB within 30 calendar days after the superintendent became aware of the criminal conviction(s);
- iii. A superintendent is required to report allegations that have already been reported in the media.
 1. A report of an allegation by the media does not absolve a superintendent of their duty to report the allegation to the EPSB.
 2. If the certificate holder resigns amidst allegations of misconduct, the superintendent still has a duty to determine whether the employee may have engaged in any actions or conduct while employed in the school district that might reasonably be expected to warrant consideration for action against the certificate. For example, if an educator was alleged to have inappropriately communicated with a student, but resigned upon notification of the allegations, an investigation must still be conducted into whether the allegations were true. In the event that the Kentucky State Police, local law enforcement, or Cabinet for Health and Family Services take charge of the investigation, the Local Educational Agency shall take all reasonable steps to preserve all evidence for the outside investigating agency and provide all evidence to the EPSB at the conclusion of the investigation. Failure to do so may result in action against the superintendent's certificate pursuant to KRS 161.120(1)(j).

E. Contents of Report

- i. The report must contain the employee's full name, most recent contact information on file for the employee including address and phone number,

social security number and position title. KRS 161.120(3)(a). If the school district has a personal email address on file for the employee, the superintendent shall include the email address in the report;

- ii. The report must contain the full facts and circumstances of the conduct. KRS 161.120(3)(b). An allegation without any supporting facts or documentation is an insufficient report that may result in action against a superintendent's certificate pursuant to KRS 161.120(1)(j). Only when the superintendent or their designee has uploaded all information about the allegation in their possession, including a completed district investigation, shall the complaint be marked as complete.
- iii. The superintendent shall forward all relevant documents and records in the superintendent's possession. This includes but is not limited to the investigative report, witness statements and contact information, disciplinary letter, security camera footage, screenshots or pictures, police reports/citations, school district policies, and interview transcripts, unless prohibited by law.
- iv. The superintendent shall preserve any records, including audio or video, in the district's possession related to the reported conduct. Failure to preserve the records and submit with the report may result in action against a superintendent's certificate pursuant to KRS 161.120(1)(j).
- v. The duty to report exists without regard to any disciplinary action, or lack thereof, by the superintendent. KRS 161.120(3)(a).
- vi. Other source complaints shall include as much of the above information as possible.

II. Initial Review

- A. EPSB staff will review all reports and complaints to determine whether the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred.
 - i. Staff shall review a complaint within 30 calendar days of receipt of a completed complaint to determine whether sufficient credible evidence exists.
- B. Within seven (7) business days of the initial complaint review, regardless of the determination, a full copy of the complaint will be uploaded to the certificate holder's KECS account and notification will be sent to the certificate holder via the KECS portal. Notice will also be sent to the superintendent if the complaint was submitted by the superintendent pursuant to KRS 161.120 (3).
- C. Reports or complaints that relate to a certificate holder where there is insufficient credible evidence that a violation of KRS 161.120(1) occurred will be kept on file for five (5) years from the date staff determine there is insufficient evidence that a violation occurred.
- D. Reports or complaints that relate to a non-certified individual will be kept on file for one (1) year after notification of the death of that individual per the EPSB's

Records Retention Schedule.

- E. Reports or complaints are not subject to disclosure pursuant to KRS 61.878(1)(i) and (j). See OAG 17-ORD-198.

III. Notice to Certificate Holder

- A. If the report or complaint contains insufficient credible evidence that conduct may have occurred that would constitute a violation of KRS 161.120(1) at the initial review, staff will close the complaint as insufficient, and the complainant may submit a new complaint if additional information has been obtained.
 - i. The certificate holder will receive notice and a copy of the full complaint even if it contains insufficient credible evidence.
- B. If the report or complaint contains insufficient credible evidence that a violation of KRS 161.120(1) may have occurred, EPSB staff shall upload a copy of the complete written complaint alleging violations of KRS 161.120(1) along with a Notification of Report to the certificate holder's KECS account.
 - i. The Notification shall:
 - 1. Notify the certificate holder that the EPSB has received a report or complaint pursuant to KRS 161.120(1);
 - 2. Notify the certificate holder that a complete copy of the report or complaint, subject to relevant laws, has been uploaded to the certificate holder's KECS account.
 - 3. Notify the certificate holder that staff has conducted an initial review to determine whether there is sufficient evidence that a violation of KRS 161.120(1) has occurred.
 - 4. Notify the certificate holder that the initial review determination decision was insufficient.
- C. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, staff will open a case file and assign that file a number.
 - i. When the EPSB staff opens a case file, the staff shall upload a copy of the complete written complaint alleging violations of KRS 161.120(1) along with a Notification of Report to the certificate holder's KECS account. The Notification shall:
 - 1. Notify the certificate holder that the EPSB has received a report or complaint pursuant to KRS 161.120(1);
 - 2. Notify the certificate holder that a complete copy of the report or complaint, subject to relevant laws, has been uploaded to the certificate holder's KECS account.
 - 3. Notify the certificate holder that staff has conducted an initial review to determine whether there is sufficient evidence that a violation of KRS 161.120(1) has occurred.

4. Notify the certificate holder that the initial review determination decision was sufficient.
 5. Notify the certificate holder that the certificate holder has thirty (30) calendar days from the date the certificate holder receives the Notification to provide the EPSB with a written rebuttal.
 6. Notify the certificate holder that the rebuttal period shall only be extended thirty (30) calendar days upon written request, as long as staff receives the written request prior to 12:00 p.m. EST on the date of expiration.
 7. Notify the certificate holder that a follow up review will occur once the rebuttal period expires.
- D. The date of the certificate holder's receipt of the Notification shall be the date KECS sends notification to the certificate holder's email address(es) on file. The certificate holder shall be solely responsible for updating his/her account with a valid personal email address and viewing any notices sent to the email address on file.
- E. If multiple reports or complaints contain sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, the complaints will continue as separate complaint numbers and can be consolidated during Final Resolution.
- i. An agreed resolution will list all complaint numbers it intends to resolve.
 - ii. A referral for hearing will list all complaints it resolves. The hearing officer will assign a consolidated case number, which upon Final Order will resolve all listed complaints.

IV. Rebuttal

- A. The certificate holder shall have the right to file a written rebuttal with the EPSB within thirty (30) calendar days from the date the certificate holder receives the notice of complaint or report from the EPSB via the KECS portal.
- i. To request a rebuttal extension, the certificate holder or their attorney shall send their request in writing to the EPSB's Clerk of Court. The request may be sent by email or KECS
 - ii. A thirty (30) calendar day extension shall be granted upon written request, as long as the written request was received by staff by 12:00 P.M. EST on the date of expiration.
- B. Rebuttals, including ones submitted by an attorney, should contain a statement that the certificate holder affirms the veracity of the statements made in the rebuttal to the best of their knowledge.

V. Follow Up Review

- A. Within ten (10) business days of the end of the response period established in Subsection IV of this section, EPSB staff shall conduct another review of the complaint to determine if sufficient credible evidence exists to support a violation.

- i. If the follow up complaint review determines the information is insufficient to support a violation of KRS 161.120(1), staff shall recommend dismissal of the complaint and send notice to the certificate holder via KECS within seven (7) business days that dismissal will be recommended to the EPSB. Notice will also be sent to the complainant.
- ii. If EPSB staff determine that evidence is sufficient to warrant EPSB review, then the certificate holder will receive a notification via KECS within seven (7) business days that further proceedings will occur. The notification will also include next steps for a potential resolution conference (“PRC”). The complainant will also receive notice stating further proceedings shall occur.

VI. Potential Resolution Conference

- A. An EPSB attorney shall meet with the certificate holder during the scheduled PRC to discuss a potential agreed resolution to be presented to the EPSB for approval. The certificate holder may have an attorney present at the PRC.
- B. An EPSB attorney may extend an offer of resolution to be presented to the EPSB for approval. The certificate holder shall have until the deadline provided by the EPSB attorney to accept or decline the offer. If the signed offer is not returned prior to the deadline, the offer is considered declined, and the matter will be presented to the EPSB for action during closed session review.
- C. The certificate holder may decline the PRC. If the certificate holder fails to attend at his/her scheduled time, the PRC will be considered waived. No extensions or rescheduling will be granted, due to statutory timeline requirements.

VII. Closed Session Review Docket

- A. Timeline
 - i. All complaints that have completed the PRC phase, either by attendance or waiver, shall be placed on the next available docket for EPSB review.
 - ii. In order to provide the EPSB with sufficient time to review all closed session materials, the Closed Session Review Docket closes at 12:00 P.M., Eastern Time, five (5) days prior to the scheduled EPSB meeting. EPSB members will receive a docket list of certificate holders’ names with links to the relevant files five (5) days prior to the scheduled EPSB meeting date.
- B. Contents
 - i. Closed session review includes, but is not limited to the following:
 1. Reports and complaints received pursuant to KRS 161.120 found to contain sufficient credible evidence and any corresponding rebuttals submitted;
 2. Certification applications that are required to be reviewed by the EPSB pursuant to the Procedures Relating to Character and Fitness Applications;

3. Agreed Orders of settlement;
4. Recommended Orders received pursuant to KRS 13B.110, if the period to file exceptions has lapsed; and
5. Motions to Reconsider received pursuant to KRS 161.120(10).

C. EPSB Review

- i. The EPSB will discuss the reports and complaints in closed session.
- ii. When making a determination as to how to proceed, the EPSB shall consider the following actions:
 1. **Dismissal with Prejudice:** Dismissal with Prejudice is appropriate when the merits of the case do not warrant any action by the EPSB. Dismissal with Prejudice is also appropriate after the certificate holder has completed the training requested by the EPSB through Deferral for Training and provided written proof to the EPSB.
 - a. An Order of Dismissal with Prejudice constitutes Final Action.
 - b. Orders of Dismissal with Prejudice are filed as part of the case file. Pursuant to the EPSB's Records Retention Schedule, certificate holder Disciplinary Records must be retained one (1) year after notification of the certificate holder's death.
 2. **Dismissal without Prejudice:** The EPSB determines that action is not warranted at the time of review and the decision can be reconsidered at a future date. Dismissal without Prejudice is based on other factors including, but not limited to, incomplete reporting and / or lack of cooperation by witnesses.
 - a. A dismissal at this juncture does not prohibit the alleged conduct from being the subject of a new report or complaint.
 3. **Conditional Dismissal upon Completion of Training (Defer for Training):** The EPSB determines that additional professional development of a certificate holder is warranted. The EPSB may offer the certificate holder an opportunity to complete specific training within a specified time period. If the certificate holder completes the training within the time period, the certificate holder shall present written proof of training to the EPSB. The EPSB will then enter an Order of Dismissal with Prejudice if the EPSB determines that the certificate holder has satisfactorily completed the training requirement.
 - a. The certificate holder shall have six (6) months to complete the training from the date the EPSB makes the

recommendation. An extension shall only be granted in cases of extraordinary circumstances and shall be at the discretion of the EPSB.

- b. It is the certificate holder's responsibility to identify and seek appropriate approval for training. If the certificate holder takes a training course that has been pre-approved by the EPSB, no additional approval is required. If the certificate holder locates a training that has not been pre-approved by the EPSB, the certificate holder should request one-time approval prior to completing the training by following the instructions on the most recent EPSB training list on the EPSB website.
 - c. Deferral for Training does not constitute final action.
- iii. **Admonishment:** An admonishment is a written censure issued by the EPSB pursuant to KRS 161.120(5). An admonishment is placed in the case file of the certificate holder.
 - 1. The Educator may appeal an admonishment pursuant to KRS 161.120(5).
 - 2. If the educator does not file a request for a hearing on the admonishment within thirty (30) calendar days, the admonishment is considered final action.
 - iv. **Further Investigation:** During this action, the assigned attorney will review and evaluate the evidence; gather information and prepare a recommendation for the EPSB in the form of a recommended agreed resolution, recommendation for sanction, or dismissal.
 - v. **Initiation of a Hearing:** Upon receipt of a recommendation for sanction, the EPSB shall either vote to initiate the hearing or send the matter back for further investigation.
 - vi. **Approve or Deny a Recommended Agreed Resolution:** The EPSB is presented with an agreed-upon proposed resolution and can either approve or deny the resolution. If the EPSB accepts the resolution, the matter shall be closed subject to the terms of the resolution. Acceptance of a recommended agreed resolution is considered final action. If the EPSB denies the resolution, the case shall be sent for further investigation or other EPSB action.
 - vii. **Deferral, Pending Proceeding:** The matter may be held in abeyance. This action may be appropriate when the content of the complaint is subject to an ongoing: Criminal investigation or proceedings; Child abuse, dependency, or neglect investigation by an authorized state agency; or Teacher tribunal process as provided in KRS 161.790. A deferral is not considered final action.
 - viii. **Deferral, Agreement:** The EPSB and the certificate holder agree to hold

the matter in abeyance in writing. A deferral is not considered final action.

D. Potential Sanctions

- i. **Admonishment:** An admonishment is a written censure issued by the EPSB pursuant to KRS 161.120(5). An admonishment is placed in the case file of the certificate holder.
- ii. **Reprimand:** a reprimand is a formal written censure. A reprimand may only be utilized in an Agreed Order or a Final Order.
- iii. **Suspension:** a suspension is a process by which the EPSB temporarily deactivates a certificate holder's certification for a specified period of time, not to exceed two years. KRS 161.120(11). At the conclusion of the specified period of time, the EPSB's staff is required to reactivate the certificate upon a demonstration that the certificate holder has complied with any reinstatement conditions that may be set forth in an agreed order or final order. KRS 161.120(11).
- iv. **Permanent Revocation:** a revocation is a permanent forfeiture of an educator's certification for the time period of the certificate holder's natural lifespan. Any application submitted for the certificate holder at any time in the future shall be denied.
 1. Permanent revocation may be warranted in some cases. Examples of some cases revocation may be warranted may include, but are not limited to, the following scenarios:
 - a. engaging in any sexual contact with a student or minor;
 - b. soliciting any sexual contact with a student or minor;
 - c. possessing or distributing child pornography;
 - d. being registered as a sex offender;
 - e. committing criminal homicide;
 - f. transferring, selling, distributing, or conspiring to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Kentucky Revised Statutes, Chapter 218A, on school property; or,
 - g. receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction. The findings of fact contained in final orders from any other jurisdiction may provide the factual basis for EPSB action, if the underlying conduct for the action is a violation of Kentucky law.
- v. **Revocation:** a revocation is a permanent forfeiture of a certificate holder's certification for a period no less than 3 years. The EPSB is

required to establish the minimum period of time before an applicant can reapply for a new certificate. KRS 161.120(12). Once the period of time has expired, the EPSB may consider a former educator's re-application for certification upon demonstration by the applicant that the former educator is again fit for practice. KRS 161.120(12).

- vi. **Voluntary Surrender:** a surrender occurs when an educator voluntarily agrees to a permanent forfeiture of the educator's certificate. Voluntary surrender acts as a permanent revocation of the certificate.
- vii. **Probationary Conditions:** the EPSB also has the authority to impose probationary or supervisory conditions upon an educator's certificate. KRS 161.120(1). This authority shall include but is not limited to the authority to require training, drug testing, and fit for duty assessments.

VIII. Notice of EPSB Action

- A. The notice of EPSB action will be uploaded electronically to the KECS portal and an electronic notice will be sent within seven (7) business days of the EPSB meeting.
 - i. Service of Notice of EPSB Action will be via an email to the account on file within the KECS system as well as an alert on the dashboard.
 - ii. The Receipt of Notice date shall be the date that the notice is uploaded to KECS and electronic notice issued.
- B. Notice of EPSB action will be sent to the superintendent if the complaint was submitted by the superintendent.
- C. Notice of EPSB action will be sent to the employing superintendent if they were the complainant pursuant to KRS 161.120(3)(c) or if the action impacts the certificate holder's eligibility for employment.

Section 3. Hearing Process

The EPSB must initiate a due process hearing before sanctions are imposed upon a certificate holder's certificate, unless sanctions are agreed to by the parties. KRS 161.120(6)(a), KRS 161.120(7). A hearing may also be initiated upon timely request of the certificate holder after receiving an admonishment or after the certificate holder's application for certification has been denied. KRS 161.120(6)(a). The administrative hearing shall be conducted in conformance with the provisions of KRS Chapter 13B. In all cases, the EPSB shall initiate the administrative hearing process through a "Notice of Hearing and Statement of Charges and Issues" (Statement of Charges) that informs the certificate holder of the specific reason for the proposed action including the statutory and/or regulatory violation(s), the factual basis on which the action is based, and the penalty the EPSB is seeking. The hearing process begins once the EPSB approves and issues a Statement of Charges prepared by the assigned attorney.

I. Agreed Orders

- A. At any point during the hearing process, the EPSB staff has the authority to enter

into discussions with a certificate holder or a certificate holder's attorney to resolve the action by agreed order. KRS 161.120(7). If the certificate holder enters into an agreed order, the certificate holder waives the due process rights afforded under KRS 161.120 and KRS 13B.

II. Filing Statement of Charges

- A. Once the EPSB has voted the case to further investigation and the assigned attorney has investigated the matter thoroughly, made an offer of settlement that was declined or waived due to failure to comply with the set deadline, the assigned attorney shall draft a recommendation either for sanction or dismissal for the EPSB to review. A recommendation for sanction shall be accompanied by a Statement of Charges.
- B. The EPSB will review, and if the EPSB determines sanctions may be warranted, they will vote to initiate a hearing and approve the Statement of Charges.
- C. Upon determination that sanctions may be warranted, the original Statement of Charges shall be filed with the EPSB's Clerk of Court within two (2) business days.
 - i. A copy shall be sent to the certificate holder's last known address by certified mail, return receipt requested.
 - ii. A copy of the Statement of Charges shall also be sent to the certificate holder's attorney, if any.
 - iii. The EPSB staff shall forward a copy of the Statement of Charges to an appointed hearing officer as set forth in KRS Chapter 13B.

III. Timing

- A. In any administrative hearing, the Hearing Officer shall conduct the hearing as soon as practicable.
- B. If after the hearing is scheduled, the certificate holder or applicant submits a request for an expedited hearing, and the hearing shall be conducted within sixty (60) calendar days of the request.

IV. Record

- A. The original of all filings shall be submitted to the EPSB's Clerk of Court by email (EPSBeducatorethics@education.ky.gov) and copies of any filed item shall be served on all parties and the hearing officer by email, or any other means permitted by law.

V. Location of Hearing

- A. Unless otherwise agreed to by the parties, all hearings shall be conducted in the offices of the EPSB.

VI. Right to a Private Hearing

- A. The certificate holder may request in writing a public or private hearing pursuant to KRS 161.120(6)(c). If the certificate holder fails to specifically request a private hearing in writing at least five days prior to the hearing, the certificate holder is

deemed to have waived the right to a private hearing and a public hearing will be conducted.

VII. Burden of Proof [KRS 13B.090(7)]

- A. The EPSB has the burden of proof on any proposed action on a certificate that is currently held, was held at the time the violations were alleged to have occurred, or if a certificate was granted and new information was discovered that was undisclosed in the application process.
- B. The EPSB must demonstrate by a preponderance of the evidence in the record that the penalty sought is appropriate.
- C. The EPSB may consider the following when determining the appropriateness of the sanctions:
 - i. The seriousness of the alleged violation;
 - ii. Whether there were any prior violations;
 - iii. Whether training is appropriate to prevent further violations;
 - iv. Whether the sanction is necessary to deter future violations; or
 - v. Other relevant circumstances or facts.
- D. The EPSB does not have the burden of proof on an Applicant's appeal of the EPSB's denial of an application of certification, or any other entitlement sought by the applicant.
 - i. The applicant has the burden of proof and the ultimate burden of persuasion as to that issue.
 - ii. The applicant must demonstrate by a preponderance of the evidence in the record entitlement to the benefit sought.

VIII. Recommended Order

- A. Sanctions. The hearing officer's Recommended Order shall include only those sanctions that are permitted pursuant to KRS 161.120(1) and shall not exceed the time limits set forth in KRS 161.120(11) - (12).
- B. Factors. The hearing officer shall determine whether the requested penalty is appropriate, and, if not, make an appropriate penalty recommendation based on the evidence and factors listed in 16 KAR 1:030 Section 3(4).
- C. Filing of Exceptions.
 - i. Service. A party may file any exceptions to the Recommended Order within 15 days of the date the Recommended Order is mailed in accordance with KRS 13B.110(4), if applicable. The original shall be filed with the EPSB's Clerk of Court by email (EPSBeducatorethics@education.ky.gov) and copies shall be served on all parties and the hearing officer by email, or any other agreed upon means permitted by law.
 - ii. Waiver. Any disagreement with a factual finding, conclusion of law, or

recommended disposition in the Recommended Order not contained in an exception to the Recommended Order shall be waived.

- iii. Form of Exceptions. Each exception to a finding of fact, conclusion of law, or recommended disposition shall be concisely stated and should summarize the evidence in support of each exception.
 1. Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.
 2. In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.
 3. Arguments should be logical and coherent and citations to authorities shall be complete.
- iv. Basis for Exceptions. Exceptions to the Recommended Order may include the following:
 1. the hearing officer has made an incorrect conclusion of law;
 2. the hearing officer has failed to make an essential finding of fact;
 3. the hearing officer applied the incorrect burden or standard of proof;
 4. the findings of fact do not support the conclusions of law;
 5. the hearing officer has made a finding of fact that is not supported by the preponderance of the evidence; or
 6. the hearing officer recommended a sanction not permitted by law.

IX. Disclosure of Record Before Final Order Issued

- A. Regardless of whether a certificate holder elects to proceed with a private or public hearing, the Recommended Order and hearing transcript is considered preliminary and, therefore, exempt from disclosure pursuant to KRS 61.878 until the EPSB issues its Final Order. After the EPSB issues its Final Order, all records, not otherwise exempt by law, will be subject to disclosure pursuant to Kentucky's Open Records Act.

X. Issuance of Final Order

- A. Closed Session. All recommended orders, and any duly filed exceptions, shall be reviewed by the EPSB in closed session. KRS 61.810 (1)(c) and (j).
- B. Final Order. Once the EPSB has returned to open session, and the EPSB chair has certified that a quorum is present, the EPSB shall vote in accordance with KRS 13B.120.
- C. Signature Authority. The EPSB may delegate to the chair the authority to sign on behalf of a majority of the EPSB members a decision made, or order issued.
- D. Copies. A copy of the Final Order shall be sent to the certificate holder by

certified mail, return receipt requested. A copy shall also be sent to the certificate holder's attorney, if any, the reporting party, the appointed hearing officer, and the EPSB attorney by email or any other agreed upon means permitted by law. If the reporting party was a superintendent, they shall also receive a copy of the Final Order. If the Final Order impacts the certificate holder's eligibility for employment, the EPSB staff shall also send a copy to the certificate holder's employing district.

- E. Disclosure of Case File After Final Order Issued. Regardless of whether a certificate holder elected to proceed with a public or private hearing, the case file including, but not limited to, the Final Order, the Recommended Order, and the hearing transcript, is subject to disclosure upon the EPSB's issuance of its Final Order unless specifically closed by the hearing officer pursuant to a provision of law.
- F. Redaction. Prior to the public disclosure of the case file in accordance with KRS 61.870, et seq., staff shall ensure that any information otherwise prohibited from disclosure by law or regulation is redacted.
- G. Administrative Finality. All Final Orders are appealable to Franklin Circuit Court or the circuit court of the county in which the certificate holder was employed when the incident occurred as outlined in KRS Chapter 13B and KRS 161.120.

Section 4. Suspension, Surrender, or Revocation of a Certificate

The EPSB has the authority to suspend or revoke a certificate holder's certificate under KRS 161.120(1). Suspension of a certificate shall be for a specific period of time, not to exceed two years and may be reinstated after the suspension period, if all required conditions are met. KRS 161.120(11). Revocation of a certificate is a permanent forfeiture of the certificate. If the revocation is for a term of years, an applicant may apply for a new certificate at the end of the revocation period, if all required conditions are met. KRS 161.120(12).

- I.** When the EPSB issues an order of suspension, surrender, or revocation, staff provide a copy of the order to the certificate holder. Copies shall also be sent to the certificate holder's attorney, if any, the appointed hearing officer, if any, and the reporting superintendent, if any. For prospective suspensions, surrenders, and revocations, the EPSB staff shall also send a copy to the certificate holder's employing district.
- II.** The order of suspension, surrender, or revocation of a certificate shall become part of the certificate holder's case file maintained by the EPSB.
- III.** Following each EPSB meeting, staff shall ensure that:
 - A. The suspension, surrender, or revocation is noted on the EPSB website.
 - B. The period of suspension shall only be noted on the website while the certificate is suspended.
 - C. The period of revocation shall be noted on the certificate and shall remain on the EPSB website.

- D. The suspension, surrender, or revocation is noted in the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse.
- E. The Clearinghouse is a searchable database administered by NASDTEC relating to certificate holder certification and discipline. Only NASDTEC members have access to the Clearinghouse.

Section 5. Reinstatement of a Suspended Certificate or Reissuance of a Certificate after Revocation

I. Reinstatement. Upon reinstatement, staff shall ensure that:

- A. The suspension is no longer noted on the website; and
- B. The reinstatement of the suspended certificate is noted in the NASDTEC Clearinghouse.

II. Reissuance. Upon reissuance, the EPSB staff shall ensure the reissuance of a revoked certificate is noted in the NASDTEC Clearinghouse.

Section 6. Probationary Conditions

The EPSB has the authority to impose probationary or supervisory conditions upon a certificate holder's certificate under KRS 161.120(1). Probationary or supervisory conditions may be imposed through an Agreed Order pursuant to KRS 161.120(9) or a Final Order pursuant to KRS 13B.120.

I. Compliance

- A. The certificate holder shall provide written proof of compliance with the probationary or supervisory conditions within the timeframe specified in the Agreed Order or Final Order.
- B. Proof of compliance shall be uploaded to staff via the KECS portal unless another method is agreed upon by both parties.
- C. It is the certificate holder's responsibility to ensure written proof of the condition has been received by staff.
- D. It is the certificate holder's responsibility to ensure their KECS account information is up to date including but not limited to mailing address, email address, and phone number.
- E. Using a work or district email or mailing address is not advised with KECS. If a certificate holder is terminated or suspended, their access to those methods is also likely suspended.
- F. It is the certificate holder's responsibility to regularly check their KECS account and/or the email address the certificate holder has noted in KECS.

II. Noncompliance.

- A. If the certificate holder fails to provide written proof of compliance with the

probationary or supervisory conditions within the timeframe specified in the Agreed Order or Final Order, staff shall send the certificate holder a ten-day letter (Letter) via the KECS portal. The Letter shall:

- i. Notify the certificate holder that the certificate holder has failed to comply with a probationary or supervisor condition(s);
 - ii. Restate the probationary or supervisory condition(s) that the certificate holder has failed to comply with, in full;
 - iii. Inform the certificate holder that the certificate holder has ten (10) calendar days from the date the Letter is uploaded to the KECS portal to submit written proof of compliance with the probationary or supervisory conditions to the EPSB or the certificate holder's certificate will be sanctioned according to the terms of the Agreed Order or Final Order; and,
 - iv. Provide a point of contact.
- B. If the certificate holder provides written proof of compliance with the probationary or supervisory conditions after receiving the Letter, the certificate holder's certificate will not be sanctioned.
- C. If the certificate holder fails to provide written proof of compliance with the probationary or supervisory conditions after the ten (10) calendar days has lapsed, the EPSB staff shall sanction the certificate holder's certificate in accordance with the terms of the Agreed Order or Final Order and notify the certificate holder of the sanction.

III. Drug Testing

- A. If a certificate holder has been ordered, through an Agreed Order or a Final Order, to submit to drug testing, staff shall send the certificate holder a Notice of Drug Testing Letter (Drug Testing Letter) via the KECS portal. The Drug Testing Letter shall:
- i. Notify the certificate holder that the certificate holder is required to complete drug testing at a state approved facility;
 - ii. Restate the drug testing condition in the Agreed Order or Final Order, in full;
 - iii. Provide a point of contact for receipt of the drug test results;
 - iv. Inform the certificate holder that the certificate holder has 48 hours from the date and time the Drug Testing Letter is uploaded to the KECS portal, to submit a sample to a state approved facility, and to sign a confidentiality waiver for the EPSB to receive the drug test results; and,
 - v. If the certificate holder fails to submit a sample to an EPSB approved facility within 48 hours, staff shall sanction the certificate holder's certificate in accordance with the terms of the Agreed Order or Final Order and notify the certificate holder of the sanction.

Section 7. Motions to Reconsider, Modify or Reverse

The EPSB may reconsider, modify, or reverse its decision on any disciplinary matter upon a motion by one of the parties or on its own volition. KRS 161.120(10). A certificate holder or the certificate holder's attorney may request that the EPSB reconsider, modify, or reverse its decision on any disciplinary matter by filing a motion with the EPSB.

I. Timing. A motion may be filed at any time to be included in the next available Closed Session Review Docket.

II. Standard. A motion to reconsider may only be granted on grounds of extraordinary circumstances and is at the discretion of the EPSB.

III. Evidence. The motion may include any evidence that circumstances have changed since the disciplinary action was taken, any evidence that the certificate holder has been rehabilitated or paid restitution for past actions, and any other relevant facts and circumstances. Evidence submitted may include but is not limited to sworn affidavits, court or medical records, and letters of support.