

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Administrative Regulation)

5 701 KAR 8:030. Charter school ~~appeal~~revocation and nonrenewal process.

6 RELATES TO: KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594,

7 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

8 STATUTORY AUTHORITY: KRS 160.1598

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1598 requires the Kentucky Board

10 of Education to promulgate an administrative regulation to establish the process to appeal a

11 decision of an authorizer denying a charter application or a charter contract amendment

12 request, unilaterally imposing conditions on the applicant or charter school, or revoking or

13 nonrenewing a charter contract ~~be used by charter school authorizers to revoke and nonrenew~~

14 ~~charter contracts for charter schools.~~ This administrative regulation provides the requirements for

15 the ~~appeal~~revocation and nonrenewal process.

16 Section 1. Definitions.

17 (1) “Appellant” means the applicant or charter school board of directors filing the appeal

18 of an authorizer’s decision denying a charter application or a charter contract amendment

19 request, unilaterally imposing conditions on the applicant or charter school, or revoking or

20 nonrenewing a charter contract.

21 (2) “Applicant” is defined in KRS 160.1590(3).

- 1 (3) “Authorizer” or “public charter school authorizer” is defined in KRS 160.1590(13).
- 2 (4) “Charter” means charter contract.
- 3 (5) “Charter application” is defined in KRS 160.1590(4).
- 4 (6) “Charter contract” or “contract” is defined in KRS 160.1590(5).
- 5 (7) “Charter school” or “Public charter school” is defined in KRS 160.1590(12).
- 6 (8) “Charter school board of directors” is defined in KRS 160.1590(6).
- 7 (9) “Days” means calendar days ~~and shall be~~ calculated pursuant to KRS 446.030.
- 8 (10) “Knowingly” means that a person knew that in authorizing, ordering, or carrying out
- 9 an act or omission that the act or omission constituted a violation of a statute or
- 10 administrative regulation.
- 11 ~~(11) “Local board of education” means a board of education described in KRS 160.160.~~
- 12 ~~(12) “Local school board” means a local board of education.~~
- 13 (11) “Local school district” is defined in KRS 160.1590(10).
- 14 (12). “Notice” means written notice.
- 15 (13) “Notify” means provide written notice.
- 16 (14) “Unilateral imposition of conditions” means the authorizer has placed conditions or
- 17 requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR
- 18 **Chapter 8:**
- 19 (a) On the applicant in the authorizer’s formal action approving the charter application;
- 20 or
- 21 (b) On the charter school in the charter contract or an amendment.
- 22 (15) “Unilaterally imposed conditions” or “Unilateral conditions” or “Conditions
- 23 unilaterally imposed” means conditions or requirements not required by KRS 160.1590 to

1 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places:

2 (a) On the applicant in the authorizer's formal action approving the charter application;

3 or

4 (b) On the charter school in the charter contract or an amendment.

5 Section 2. Policies and Procedures. (1) The authorizer shall create and publish on its website  
6 policies and procedures for its implementation of KRS 160.1595 and 160.1598 as follows:

7 (a) The authorizer shall include in its policies and procedures a rubric for its evaluation of a  
8 charter application and its rubric for evaluation of charter contract performance for renewal;

9 (b) The authorizer shall publish on its website~~make public and provide a copy of~~ its policies  
10 and procedures, including any rubric for evaluation of charter contract performance for renewal  
11 under KRS 160.1598,~~upon request~~;

12 (c) The authorizer shall include in its policies and procedures the circumstances that shall  
13 result in automatic revocation or nonrenewal of a charter contract, only as allowed in KRS  
14 160.1590 to 160.1599,~~and~~ 161.141, and 701 KAR Chapter 8; ~~and~~

15 (d) The authorizer shall include in its policies and procedures the requirements and  
16 timeline for timely notification of the prospect of revocation or nonrenewal of the charter  
17 contract and of the reasons for such possible closure;

18 (e) The authorizer shall include in its policies and procedures the reasonable deadline and  
19 requirements for a charter school's opportunity to respond to the authorizer's notice of the  
20 prospect of revocation or nonrenewal of the charter contract; and

21 (f) The authorizer shall include in its policies and procedures the requirements for appeal of  
22 an authorizer decision denying a charter application or a charter amendment request,  
23 nonrenewing or revoking a charter contract, or imposing unilateral conditions on an

1 ~~applicant or charter school~~ revocation or nonrenewal of a charter contract.

2 Section 3. Appeal. (1) The ~~appellant~~charter school shall submit its appeal of an authorizer's  
3 decision denying a charter application or a charter amendment request, nonrenewing or  
4 revoking a charter contract, or imposing unilateral conditions on an applicant or charter  
5 school revocation or nonrenewal of the charter contract to the commissioner of education, to  
6 receive the appeal on behalf of the Board, as follows:

7 (a) The deadline for appeals to the Board under KRS 160.1595 shall be thirty (30) days, as  
8 evidenced by the face of the authorizer's notice to the charter school or applicant of the decision  
9 to deny a charter application or charter contract amendment request, to impose unilateral  
10 conditions on the applicant or the charter school, or to revoke or nonrenew the charter contract;

11 (b) The appeal shall include the name, phone number, mailing address, and email address of  
12 the contact for the ~~appellant~~charter school and any legal counsel;

13 (c) The appeal shall include a statement from the ~~appellant~~charter school whether there is a  
14 request for a hearing, and whether the hearing is requested to be held in the local school district  
15 in which the charter school lies or would lie resides; and

16 (d) The appeal shall be submitted on the Notice of Appeal form, ~~incorporated by reference,~~  
17 and include any necessary additional documentation.

18 (2) ~~A charter school's failure to file an appeal compliant with subsection (1) of this section~~  
19 ~~shall act as a waiver of the charter school's right to appeal the authorizer's decision to revoke, or~~  
20 ~~nonrenew a charter contract.~~ OR The Board may affirm the decision of the authorizer based  
21 on the failure of an ~~appellant~~charter school to meet any of the deadlines of this administrative  
22 regulation or the hearing process ~~may result in the automatic affirmation of the revocation, or~~  
23 ~~nonrenewal decision of the authorizer.~~

1 (3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of  
2 education on behalf of the Board shall provide notice to the appellant~~charter school~~ and the  
3 authorizer acknowledging receipt of the appeal, and:

4 (a) If a hearing is requested in the appeal, the commissioner of education shall designate a  
5 hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing  
6 before the Board on the appeal, and to set the location of the public hearing; or

7 (b) If a hearing is not requested in the appeal or if the appellant~~charter school~~ waives its  
8 right at any time to a hearing by providing written notice of its waiver to the commissioner of  
9 education or to any previously appointed hearing officer, the hearing officer shall set the  
10 schedule for written pleadings under KRS 13B.090(2) to be submitted to the Board without a  
11 hearing.

12 (4) The written decision of the Board shall be issued no later than seven (7) days after the  
13 conclusion of the hearing or the meeting to decide upon the written pleadings, which shall be  
14 held within the time allowed in KRS 160.1595(3)(a).

15 Section 4. Emergency action. (1) Emergency action taken by the authorizer pursuant to KRS  
16 160.1598(7) shall be taken in accordance with KRS 13B.125.

17 Section 5. Automatic Revocation or Nonrenewal. (1) **The Board shall affirm revocation or**  
18 **nonrenewal of a charter school for whom the commissioner of education** ~~department~~ has  
19 determined a member of the charter school board of directors, or an education service provider  
20 at the direction of a member of the board of directors, or an employee at the direction of a  
21 member of the board of directors, has knowingly ~~intentionally~~ violated 703 KAR 5:080,  
22 Administration Code for Kentucky's Assessment Program, or KRS 160.1592(3)(g) for a student  
23 assessment included in the ~~academic~~ performance framework ~~goals~~ of the charter contract or the

1 state accountability system after:

2 **(a) The department’s presentation of a preponderance of evidence at a KRS Chapter**  
3 **13B hearing before the Board that a member of the charter school board of directors, or an**  
4 **education service provider at the direction of a member of the charter school board of**  
5 **directors, or an employee at the direction of a member of the charter school board of**  
6 **directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's**  
7 **Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:**

8 **1. The performance framework of the charter contract; or**

9 **2. The state accountability system; or**

10 **(b) The charter school board of directors waives its right to a KRS Chapter 13B**  
11 **hearing under this section.**

12 Section 6. Incorporation by Reference. (1) “Notice of Appeal”, January 2018, is incorporated by  
13 reference.

14 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at  
15 the Department of Education, Office of Legal, Legislative and Communication Services, 5<sup>th</sup>  
16 floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m.  
17 to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Stephen L. Pruitt, Ph.D.  
Commissioner of Education

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mary Gwen Wheeler, Chair  
Kentucky Board of Education

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on \_\_\_\_\_, 2017, at 10 a.m., in the State Board Room, Fifth Floor, Sower Building, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through \_\_\_\_\_, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 701 KAR 8:030

Agency Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1598.

(b) The necessity of this administrative regulation: KRS 160.1598 became effective on June 29, 2017. This administrative regulation provides guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.1598 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school. This administrative regulation provides guidance from the agency on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 160.1598 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance from the agency on student application, lottery, and enrollment in the public charter schools. This new administrative regulation provides guidance to facilitate transparency and uniformity in the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school, as required by KRS 160.1598.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Charter school authorizers, public charter schools, students attending public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Public charter schools, for whom the authorizer has decided to revoke or non-renew the charter contract, will have to appeal the authorizer's decision pursuant to this administrative regulation to prevent revocation or nonrenewal. Charter authorizers, that revoke or non-renew a charter school's contract, will have to allow the charter school the due process opportunity to challenge the revocation or nonrenewal decision. The Kentucky Department of Education shall provide support to ensure the transparent and uniform appeal process for public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for authorizers and charter schools should be minimal to none because the statutes require the substance of what the authorizer and the charter school will present in an appeal. Same for the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will provide guidance on the process for a public charter school appeal of an authorizer's decision to revoke or non-renew a charter school.

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

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No fees or additional funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 701 KAR 8:030

Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?: Charter school authorizers, public charter schools, and the Kentucky Department of Education.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1598.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no impact on the expenditures or revenues for public charter schools, their authorizers, or the agency.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district revenues or public charter schools.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.
  - (c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.
  - (d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to none.

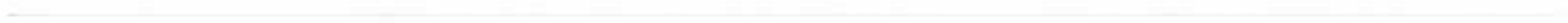
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There should be no fiscal impact resulting from the new administrative regulation.



**Kentucky Board of Education**  
**701 KAR 8:030**  
**Notice of Appeal**

1. Charter school/applicant name: \_\_\_\_\_
2. School district in which charter school lies/would lie: \_\_\_\_\_
3. Charter school/applicant contact's name and title: \_\_\_\_\_
4. Phone number of the charter school contact/applicant: \_\_\_\_\_
5. Mailing address of charter school contact/applicant: \_\_\_\_\_
6. Email address of the charter school contact/applicant: \_\_\_\_\_
7. Name of any legal counsel (and contact information) representing the charter school/applicant:  
\_\_\_\_\_
8. Name of the authorizer: \_\_\_\_\_
9. Indicate if this is the first or second notice of appeal to the Board on this authorizer decision: \_\_\_\_\_
10. a. Is the charter school/applicant requesting a hearing on this appeal or waiving its right to a hearing on this appeal?  
Requesting a hearing on this appeal \_\_\_\_\_  
Waiving its right to a hearing on this appeal \_\_\_\_\_

b. If a hearing is requested, is the charter school/applicant requesting the hearing on this appeal be held in the school district in which the charter school lies/would lie? Yes \_\_\_ No \_\_\_

11. KRS 160.1595 limits the grounds of an appeal to the grounds specified by the authorizer for the denial of an application or charter contract amendment request, or the nonrenewal or revocation of a charter, or the unilateral imposition of conditions, whichever is being appealed. Specify the type of authorizer decision you are appealing and provide a brief statement below of the reasons the charter school contends the authorizer's decision was in error.

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12. Attach to your notice of appeal a copy of authorizer's notice to the charter school/applicant of the decision on appeal.

13. For an appeal by a charter school, attach to your notice of appeal a copy of the agenda and other Open Meetings documentation of the charter school board of directors' decision to appeal the authorizer's decision.

14. Attach to your notice of appeal any necessary additional documentation for your appeal of the authorizer's decision.

\_\_\_\_\_  
Applicant/Charter School Contact's Name

\_\_\_\_\_  
Charter School Board of Directors Chair's Name

\_\_\_\_\_  
Applicant/Charter School Contact's Signature

\_\_\_\_\_  
Charter School Board Chair Signature

\_\_\_\_\_  
Date

