

## KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

**Topic:** Amendment of 702 KAR 1:140, Student records; hearing procedures

**Date:** April 2022

**Action Requested:**  Review  Action/Consent  Action/Discussion

**Held In:**  Full Board  Curriculum, Instruction and Assessment  Operations

### SUMMARY OF ISSUE BEFORE THE BOARD:

To take action to approve the amendment of regulation 702 KAR 1:140.

### COMMISSIONER'S RECOMMENDATION:

The Commissioner of Education recommends regulation 702 KAR 1:140 be amended and that the Kentucky Board of Education approve the amendment.

### APPLICABLE STATUTE OR REGULATION:

KRS 160.730 and 20 U.S.C. 1232g (a)(2), Family Educational Rights and Privacy Act ("FERPA")

### BACKGROUND:

#### *Existing Policy:*

In 1995, regulation 702 KAR 1:140 was established to set up a process to allow parents or eligible students to challenge the accuracy of a student's education record. The regulation relates to KRS 160.730 and the FERPA statute that covers the same issue. A parent or an eligible student can request a modification of the student's education record if the parent or student believes the education record is inaccurate, misleading, or otherwise in violation of the privacy rights of student. The regulation requires the educational agency to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

As mentioned above, a parent or eligible student may request the school district modify the student's education record and an informal meeting of the parties may take place. If the parties agree to modify the education record, they shall reduce the agreement to writing. If the school district denies the request, they must notify the parent or eligible student of the right to have a hearing on the matter.

Currently, the regulation states "a hearing officer who is a disinterested party and is a certified official of the district appointed by the superintendent" shall conduct the hearing. This language is unclear, confusing and may be read inaccurately by a school district. KRS 160.730 does not specify that a certified official must conduct the hearing rather it states: "an official of the educational institution who has no direct interest in the outcome of the challenge shall conduct the hearing."

#### *Summary of Issue:*

The Commissioner of Education recommends the regulation be modified to match the intent of the statute and be more in line with the federal statute. The Commissioner recommends the confusing language in the regulation be modified to the following: "The hearing shall be conducted by any individual who is a disinterested party and is appointed by the superintendent to conduct the hearing." With this change the regulation will state any disinterested party appointed by the local superintendent may conduct a hearing, whether a certified or classified employee. Finally, the Commissioner recommends the language of the regulation be modified to be consistent and uniform with the federal statute in the matter of terminology.

*Budget Impact:*

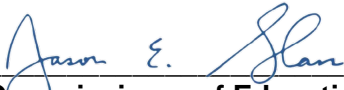
Approval of this amendment to regulation 702 KAR 1:140 has no fiscal impact on the Kentucky Department of Education or Kentucky Board of Education.

**GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:**

This regulation was reviewed by the Local Superintendents Advisory Council (LSAC).

**CONTACT PERSON(S):**

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**Commissioner of Education**

Category: <input type="checkbox"/> Educator Workforce Diversity <input type="checkbox"/> Portrait of a Graduate Partnerships <input type="checkbox"/> Racial Equity Commitment <input type="checkbox"/> Student-Centered Accountability System <input type="checkbox"/> Early Childhood <input type="checkbox"/> District Support
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