

Statement of Emergency

701 KAR 8:030E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(3) to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law. This emergency administrative regulation is necessary in order to meet statutory deadlines outlined in KRS 160.1590 to KRS 160.1599 as amended by House Bill 9 (2022). Pursuant to KRS 160.15911, Kentucky public charter school pilot project, Charter Authorizers are required to “solicit, review, and approve at least one (1) charter application for a public charter school” before July 1, 2023. This regulation outlines the appeals process for a public charter school that wishes to appeal the decision of an authorizer. As authorizers are required to begin making decisions before July 1, 2023, this regulation must be updated in time to allow appeals processes to take place. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation other than technical amendments. This emergency amendment exclusively incorporates amendments to the existing administrative regulation made by and necessary to comply with House Bill 9 (R.S. 2022).

Andy Beshear, Governor

Lu S. Young, Chair
Kentucky Board of Education

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Emergency Amendment)

5 701 KAR 8:030E. Charter school appeal 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 13B.170, 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 request,
12 unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a
13 charter contract. This administrative regulation establishes the requirements for the appeal
14 process.

15 Section 1. Definitions. (1) "Appellant" means the applicant or charter school board of directors
16 filing the appeal of an authorizer's decision denying a charter application or a charter contract
17 amendment request, unilaterally imposing conditions on the applicant or charter school, or
18 revoking or nonrenewing a charter contract.

19 (2) "Applicant" is defined by KRS 160.1590~~[(3)]~~ (2).

20 (3) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590~~[(13)]~~ (15).

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

1 Section 2. Policies and Procedures. The authorizer shall create and publish on its website policies
2 and procedures for its implementation of KRS 160.1595 and 160.1598 as [~~established~~] established
3 in subsections (1) through (5) of this section. The authorizer shall include in its policies and
4 procedures:

5 (1) A rubric for its evaluation of a charter application and its rubric for evaluation of charter
6 contract performance for renewal pursuant to KRS 160.1598;

7 (2) The circumstances that shall result in automatic revocation or nonrenewal of a charter
8 contract, only as allowed in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

9 (3) The requirements and timeline for timely notification of the prospect of revocation or
10 nonrenewal of the charter contract and of the reasons for the possible closure;

11 (4) The reasonable deadline and requirements for a charter school's opportunity to respond to the
12 authorizer's notice of the prospect of revocation or nonrenewal of the charter contract; and

13 (5) The requirements for appeal of an authorizer decision denying a charter application or a
14 charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral
15 conditions on an applicant or charter school.

16 Section 3. Appeal. (1) The appellant shall submit its appeal of an authorizer's decision denying a
17 charter application or a charter amendment request, nonrenewing or revoking a charter contract,
18 or imposing unilateral conditions on an applicant or charter school to the commissioner of
19 education, to receive the appeal on behalf of the Kentucky Board of Education, as established in
20 paragraphs (a) through (d) of this subsection.

21 (a) The deadline for appeals to the Kentucky Board of Education under KRS 160.1595 shall be
22 thirty (30) days, as evidenced by the face of the authorizer's notice to the charter school or
23 applicant of the decision to deny a charter application or charter contract amendment request, to

1 impose unilateral conditions on the applicant or the charter school, or to revoke or nonrenew the
2 charter contract.

3 (b) The appeal shall include the name, phone number, mailing address, and email address of the
4 contact for the appellant and any legal counsel.

5 (c) The appeal shall include a statement from the appellant whether there is a request for a
6 hearing, and whether the hearing is requested to be held in the local school district in which the
7 charter school lies or would lie.

8 (d) The appeal shall be submitted on the Notice of Appeal and include any necessary additional
9 documentation.

10 (2) The Kentucky Board of Education shall affirm the decision of the authorizer based on the
11 appellant's failure to timely file the appeal, pursuant to KRS 160.1595(2) and subsection (1)(a) of
12 this section, and may affirm the decision of the authorizer based on the failure of an appellant to
13 meet any of the other deadlines of this administrative regulation or the hearing process.

14 (3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of
15 education on behalf of the Kentucky Board of Education shall provide notice to the appellant and
16 the authorizer acknowledging receipt of the appeal, and:

17 (a) If a hearing is requested in the appeal, the commissioner of education shall designate a
18 hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing
19 before the Kentucky Board of Education on the appeal, and to set the location of the public
20 hearing; or

21 (b) If a hearing is not requested in the appeal or if the appellant waives its right at any time to a
22 hearing by providing written notice of its waiver to the commissioner of education or to any
23 previously appointed hearing officer, the hearing officer shall set the schedule for written

1 pleadings under KRS 13B.090(2) to be submitted to the Kentucky Board of Education without a
2 hearing.

3 (4) The written decision of the Kentucky Board of Education shall be issued no later than forty-
4 five (45) days following receipt of the notice of appeal as required by KRS 160.1595(2)(c)
5 ~~[seven (7) days after the conclusion of the hearing or the meeting to decide upon the written~~
6 ~~pleadings, which shall be held within the time allowed in KRS 160.1595(3)(a)].~~

7 Section 4. Emergency Action. Emergency action taken by the authorizer pursuant to KRS
8 160.1598(7) shall be taken in accordance with KRS 13B.125.

9 Section 5. Automatic Revocation or Nonrenewal. The Kentucky Board of Education shall affirm
10 revocation or nonrenewal of a charter school for whom the commissioner of education has
11 determined a member of the charter school board of directors, or an education service provider at
12 the direction of a member of the board of directors, or an employee at the direction of a member
13 of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for
14 Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment
15 included in the performance framework of the charter contract or the state accountability system
16 after:

17 (1) The department's presentation of a preponderance of evidence at a KRS Chapter 13B hearing
18 before the Kentucky Board of Education that a member of the charter school board of directors,
19 or an education service provider at the direction of a member of the charter school board of
20 directors, or an employee at the direction of a member of the charter school board of directors,
21 has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational
22 Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:

23 (a) The performance framework of the charter contract; or

- 1 (b) The state accountability system; or
- 2 (2) The charter school board of directors waives its right to a KRS Chapter 13B hearing under
- 3 this section.
- 4 Section 6. Incorporation by Reference.
- 5 (1) "Notice of Appeal" October 2022, [~~February 2018~~], is incorporated by reference.
- 6 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
- 7 the Department of Education, Office of Legal [~~Legislative and Communication~~] Services, 5th
- 8 floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m.
- 9 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)

Jason E. Glass, Ed.D.
Commissioner of Education

(Date)

Lu S. Young, Ed.D.,
Chairperson Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 30, 2022, at 10 am in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days 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 canceled. 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 until November 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

701 KAR 8:030E

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(b) The necessity of this administrative regulation:

This administrative regulation is required under KRS 160.1598.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation is required by KRS 160.1598. This regulation outlines the procedures to be used by public charter schools that wish to appeal a decision made by a charter authorizer.

(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:

The regulation amendments include those changes required by House Bill 9 (2022). It includes updated timelines and technical amendments.

(b) The necessity of the amendment to this administrative regulation:

This amendment is required to conform to statutory amendments made by House Bill 9 (2022).

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment includes updates prompted by House Bill 9 (2022). It includes updated timelines and technical amendments.

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

This amendment is required to ensure that public charter school authorizers remain in compliance with KRS 160.1590 through 160.1599 as amended by House Bill 9 (2022).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Local school districts, public charter school authorizers, parents, students.

(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:

This regulation outlines the procedures to be used by public charter schools in the event that they wish to appeal a decision made by an authorizer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The changes to this administrative regulation will not result in any additional cost to any of the identified entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulation ensures compliance with KRS 160.1590 to 160.1599.

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

(a) Initially:

Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not increase those costs.

(b) On a continuing basis:

Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

General funds.

(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:

This administrative regulation will not result in the collection of any increased fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied?

Tiering is not applied to this regulation as it applies equally to all public charter school authorizers.

FISCAL NOTE

701 KAR 8:030E

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@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?

This administrative regulation impacts public charter school authorizers, which may include public school districts or state universities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

(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.

(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 will not generate revenue for state or local governments.

(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 will not generate revenue for state or local governments.

(c) How much will it cost to administer this program for the first year?

Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs.

(d) How much will it cost to administer this program for subsequent years?

Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): Costs to the Kentucky Board of Education are anticipated in the form of time and expense to hear and decide charter school appeals. However, this regulation amendment will not create additional costs. The actual costs will be dependent on the number of appeals to the Kentucky Board of Education.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will not result in cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will not result in cost savings.

(c) How much will it cost the regulated entities for the first year?

There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

(d) How much will it cost the regulated entities for subsequent years?

There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

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

Cost Savings (+/-): \$0.00

Expenditures (+/-): There is no direct cost to implement this administrative regulation, but indirect costs such as legal fees for appeal representation are possible.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

Whether this administrative regulation will not a major economic impact as defined by KRS 13A.010(13) is dependent on the number of appeals received by the Kentucky Board of Education. If a substantial number of appeals are received, then there will be a major economic impact in the form of time and expenses (including legal fees) related to appeals. However, if a de minimis number of appeals are received, there will be no major economic impact as defined by KRS 13A.010(13).

Summary Page - Incorporation by Reference

701 KAR 8:030. Charter school appeal process.

The following documents are incorporated by reference:

(1) "Notice of Appeal", October 2022 [~~February 2018~~]. The document incorporated by reference consists of two (2) pages. This document is the form for an applicant or charter school to appeal a decision of the authorizer pursuant to KRS 160.1595.