

1 EDUCATION AND LABOR CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 701 KAR 5:090. Teacher disciplinary hearings.

6 RELATES TO: KRS 161.770, 161.790

7 STATUTORY AUTHORITY: KRS 156.070, 161.770, 161.790(4)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.790(4) and 161.770 require[s]

9 the commissioner of education to appoint an impartial three (3) member tribunal to

10 conduct an administrative hearing and issue a [make the] final decision when

11 ~~[determination on charges concerning]~~ a local school district seeks[']s proposal] to

12 discipline ~~[or place on involuntary leave]~~ a teacher or place a[if the] teacher on

13 involuntary leave, if the teacher timely requests a hearing[gives timely notice of his or

14 ~~her intent to answer the charges]~~. This administrative regulation establishes

15 the[administrative and hearing] procedures governing tribunal hearings and sets the

16 qualifications and training requirements for tribunal members[with respect to the tribunal

17 ~~process and identifies the required training for tribunal members designated to serve as~~

18 ~~tribunal members on an ongoing basis]~~.

19 Section 1. Definitions.

20 (1) "Commissioner" means the commissioner of the Kentucky Department of Education.

1 (2) "Department" means the Kentucky Department of Education.

2 (3) "Hearing officer" means the attorney member of the tribunal appointed by the
3 commissioner.

4 (4) "Timely request" means written notification from a teacher meeting all requirements of
5 KRS 161.790(3), and received by the commissioner within ten (10) days following the
6 receipt of written charges by teacher.

7 (5) "Tribunal" means the three (3) member panel appointed pursuant to KRS 161.790(4).

8 (6) "Written charges" means the written rationale provided by a school district to an
9 employee supporting:

10 (a) Contract termination, suspension without pay, or public reprimand pursuant to
11 161.790; or

12 (b) Involuntary leave pursuant to KRS 161.770.

13 Section 2[4]. Notification to the Commissioner of Discipline or Involuntary Leave. If a [A
14 ~~local school district]~~ superintendent proposes~~[proposing to]~~ discipline of a teacher
15 pursuant to KRS 161.790, other than private reprimand, or a board of education
16 places~~[placing]~~ a teacher or superintendent on involuntary leave pursuant to KRS
17 161.770, the district shall immediately send~~[, after notice to the employee, transmit a~~
18 ~~copy of the notice of the action to]~~ the commissioner ~~[of education]~~ a copy of the written
19 charges and documentation of the date the employee received the written charges~~;~~
20 ~~along with advice as to the date of the receipt of the notice by the employee].~~

21 Section 3[2]. Hearing Officer Qualifications. (1) Upon receipt of a timely request, the
22 commissioner shall appoint a hearing officer who shall hold the following qualifications
23 ~~[notification from a teacher pursuant to KRS 161.790(3) of the teacher's intention to~~

1 ~~answer the charges against him or her, the commissioner shall appoint a hearing officer~~
2 ~~in accordance with KRS 161.790(4) who meets the following qualifications]:~~

3 (a) [(1)] Be [The hearing officer shall be] an attorney licensed to practice law in the
4 Commonwealth of Kentucky and in good standing with the state licensing authority for
5 attorneys [Kentucky Bar Association];

6 (b) [(2)] Completed[The hearing officer shall complete] biennial training [as] approved by
7 the department [Kentucky Department of Education] on the following topics:

8 1. Teacher employment law; and
9 2. The Professional Code of Ethics in 16 KAR 1:020; and

10 (c) Satisfies all training requirements in 40 KAR 5:010 [related to the employment of
11 teachers;

12 ~~(3) The hearing officer shall complete biennial training as approved by the Kentucky~~
13 ~~Department of Education related to the professional code of ethics for Kentucky school~~
14 ~~certified personnel set forth in 16 KAR 1:020; and~~

15 ~~(4) The hearing officer shall meet the training requirements set forth in 40 KAR 5:010].~~
16 ~~Section 4[3]. Teacher and Administrator Tribunal Members[Qualifications].~~

17 (1) [Beginning in 2019 and] E[e]very four (4) years [thereafter], the department
18 [Kentucky Department of Education] shall establish and maintain a pool consisting of
19 not more than twenty (20) teacher members and not more than twenty (20)
20 administrator members who may be assigned to a tribunal. The department shall solicit
21 applications for the purpose of identifying qualified individuals to serve as potential
22 tribunal members.

1 (2) Any individual seeking consideration for inclusion in the pool shall submit a
2 completed Teacher and Administrator Tribunal Member Application in accordance with
3 procedures established by the department~~[to establish a pool of potential teacher or~~
4 ~~administrator tribunal members. Individuals who wish to be considered for the pool of~~
5 ~~potential teacher or administrator tribunal members shall apply using the Teacher and~~
6 ~~Administrator Tribunal Member Application. The Kentucky Department of Education~~
7 ~~shall select no more than twenty (20) potential teacher tribunal members for the pool~~
8 ~~using procedures developed by the Kentucky Department of Education for the receipt,~~
9 ~~review, and selection of applicants. The Kentucky Department of Education shall select~~
10 ~~no more than twenty (20) potential administrator tribunal members for the pool using~~
11 ~~procedures developed by the Kentucky Department of Education for the receipt, review,~~
12 ~~and selection of applicants].~~

13 (3) [(2) Teacher~~[To be a member of the pool of potential teacher tribunal]~~ members of
14 the tribunal ~~[designated to serve as a teacher tribunal member on an ongoing basis, a~~
15 ~~person]~~ shall:

16 (a) Hold a valid Kentucky teaching certificate issued by the Education Professional
17 Standards Board and be in good standing; or

18 (b) Be retired and previously~~[have]~~ held a valid Kentucky teaching certificate issued by
19 the Education Professional Standards Board that was not revoked or surrendered as a
20 result of disciplinary ~~[revocation]~~ proceedings.

21 (4) [(3) Administrator~~[To be a member of the pool of potential administrator tribunal]~~
22 members of the tribunal ~~[designated to serve as an administrator tribunal member on an~~
23 ~~ongoing basis, a person]~~ shall:

1 (a) Hold a valid Kentucky teaching certificate for the performance of administrative
2 duties issued by the Education Professional Standards Board and be in good standing;

3 or

4 (b) Be retired and previously~~[have]~~ held a valid Kentucky teaching certificate for the
5 performance of administrative duties issued by the Education Professional Standards
6 Board that was not revoked or surrendered as a result of disciplinary ~~[revocation]~~
7 proceedings.

8 (5) [(4)] Teacher and administrator tribunal members shall complete ~~[Individuals~~
9 ~~selected for the pool of potential teacher or administrator tribunal members designated~~
10 ~~to serve as a teacher or administrator tribunal member on an ongoing basis shall~~
11 ~~complete]~~ training approved by the department ~~[Kentucky Department of Education]~~ on
12 the following topics at least once every four (4) years:

13 (a) The hearing process;

14 (b) Roles of tribunal members and the hearing officer~~[The role of the tribunal];~~

15 (c) Fact-finding and deliberation~~[The role of the hearing officer];~~

16 (d) ~~[How to determine facts;~~

17 ~~(e)] Fundamental fairness;~~

18 ~~(e)]~~~~(f)The law on teacher disciplinary actions set forth at]~~ KRS 161.790; and

19 (f)~~[(g)] The professional code of ethics [for Kentucky school certified personnel]set~~
20 forth in 16 KAR 1:020~~]; and~~

21 ~~(h) The deliberative process].~~

22 (6) [(5)] For attending training approved by the department ~~[Kentucky Department of~~
23 Education], teacher and administrator tribunal members ~~[required to be a member of the~~

1 ~~pool of potential teacher or administrator tribunal members, a person~~ shall receive a
2 \$100 per diem~~[of \$100]~~ and travel reimbursement ~~[of travel expenses]~~ from the
3 department ~~[Department of Education]~~.

4 Section 5~~[4]~~. Expenses~~[Reimbursement]~~. (1) The local school district shall be
5 responsible for paying the assigned hearing officer's costs as billed by the department,
6 including ~~[pay all]~~ travel expenses of the hearing officer~~[tribunal member]~~ pursuant to ~~[in~~
7 ~~accordance with]~~ 200 KAR 2:006.

8 (2) No later than the convening of the tribunal hearing, the local school district shall
9 advise the teacher and administrator tribunal members how to claim their per diem and
10 travel expenses, to be paid by the school district.

11 Section 6~~[5]~~. Conduct of Hearing. (1) Hearings~~[A hearing before the tribunal]~~ shall be
12 conducted in accordance with KRS Chapter 13B.

13 (2) The tribunal shall be presented with the written charges~~[notification described in~~
14 ~~Section 1, which sets forth the charges for discipline or involuntary leave]~~.

15 (3) The hearing officer shall instruct the tribunal regarding the burden of proof, including
16 which party bears the burden of proof.

17 (4) If, for any reason and after testimony has commenced, a tribunal member becomes
18 unavailable to complete the hearing of the evidence of both parties, an appropriate
19 substitute tribunal member shall be appointed by the commissioner ~~[of education]~~ and
20 provided by the school district with a written transcript of all prior proceedings at the
21 hearing unless waived under subsection (5) of this section.

22 (5) A hearing may be concluded and a decision rendered by a two (2) member tribunal
23 upon express agreement of both parties so long as one (1) of the two (2) tribunal

1 members is a hearing officer [~~member in accordance with Section 2 of this~~
2 ~~administrative regulation~~].
3 Section 7[~~6~~]. Continuances.
4 (1)
5 (a) If, after a requested hearing has been scheduled by the commissioner [~~of education~~
6 ~~or his or her designee~~], a continuance is requested by the teacher, the teacher shall
7 specifically and in writing waive the statutory hearing deadlines and any subsequent
8 backpay award for the period of the requested continuance. A continuance initiated by
9 the teacher shall not be granted without the appropriate waiver.
10 (b) If the continuance request was initiated by the school district, a waiver shall not be
11 required.
12 (2) A continuance requested by the teacher may be granted for good cause shown,
13 including pending criminal charges making it inadvisable for the employee to testify at
14 an administrative hearing or late entry of an attorney into the case on behalf of the
15 employee.
16 (3) A continuance requested by the school district, and not agreed to by the employee,
17 may be granted upon documentation of good cause making it impossible or prejudicially
18 impractical for the district to adequately present its case at the scheduled hearing.
19 (4) A request for continuance made prior to the [~~three (3) member~~] tribunal hearing
20 commencing [~~convening~~] shall be submitted in writing to the hearing officer.
21 Section 8[~~7~~]. Incorporation by Reference. (1) The "Teacher and Administrator Tribunal
22 Member Application", June 2026 [~~2019~~], is incorporated by reference.

- 1 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
- 2 law at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort,
- 3 Kentucky 40601, Monday through Friday, 8 a.m. 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)

Dr. Robbie Fletcher
Commissioner of Education

(Date)

Sharon Porter Robinson, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on _____, 2026, at _____am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 _____, 2026. 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: 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 5:090

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

Subject Headings: Education, Education: Elementary, Education: Secondary

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative and hearing procedures regarding the teacher tribunal process and provides training requirements for tribunal members.

(b) The necessity of this administrative regulation: KRS 161.790 and KRS 161.770 require the commissioner of education to appoint an impartial three-member tribunal to conduct an administrative hearing when a teacher appeals a district's proposal for discipline or the placement of a teacher on involuntary leave. This administrative regulation also provides guidelines for the required training of tribunal members.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools. KRS 161.770 allows teachers or superintendents the right to a hearing and appeal if they receive an unrequested leave of absence in accordance with hearing and appeal provisions in KRS 161.790. Further, KRS 161.790 provides the requirements for teacher tribunal hearings and required training for tribunal members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 161.790 provides that local school districts shall establish, pursuant to Kentucky Board of Education administrative regulations, a process to hold administrative hearings when a teacher requests an appeal of discipline from the local school district. This administrative regulation also provides guidelines for the training of tribunal members.

(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 amendment adds a definition section for clarity, makes the regulation more concise and clearer, aligns the regulation with current practice, and updates a form incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The regulation amendment is necessary to clarify the process for teacher tribunal hearings; the amendment establishes timeliness requirements and provides clarification of training and hearing requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools. KRS 161.770 allows teachers or superintendents the right to a hearing and appeal if they receive an unrequested leave of absence in accordance with hearing and appeal provisions in KRS 161.790. Further, KRS 161.790 provides the requirements for teacher tribunal hearings and required training for tribunal members.

(d) How the amendment will assist in the effective administration of the statutes: KRS 161.790 provides that local school districts shall establish, pursuant to Kentucky Board of Education administrative regulations, a process to hold administrative hearings when a teacher requests an appeal of discipline from the local school district. This administrative regulation also provides guidelines for the training of tribunal members.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? No.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, Kentucky Department of Education, and Kentucky Attorney General's office.

(5) Provide an analysis of how the entities identified in question (4) 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 (4) will have to take to comply with this administrative regulation or amendment: The regulation amendment requires school districts to provide certain notice to the Kentucky Department of Education, and governs the administrative hearing process. The regulation amendment requires the Kentucky Department of Education to establish training requirements for tribunal members and to receive appeal documents and schedule hearings for each requested administrative hearing. The regulation amendment also governs training requirements for hearing officers provided by the Kentucky Office of the Attorney General.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4): The anticipated cost to school districts is dependent upon how many tribunals they have involving district employees. The most substantial cost is that of the hearing officer supplied by the Office of Attorney General. Other costs include the statutorily required \$100 per diem for teacher and administrator tribunal members. The anticipated cost to the Kentucky Department of Education is minimal, as the department funds the training for tribunal members, once every four years. There is no anticipated cost for the Attorney General's office as this office bills by the hour for hearing officer services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4): School districts will be in compliance with KRS 160.790 and 160.770 which provides

that local school districts shall comply with the due process rights of teachers that appeal the districts' discipline and will establish, pursuant to Kentucky Board of Education administrative regulations, a procedure for teacher tribunal hearings. The Kentucky Department of Education will be in compliance with KRS 160.790 and 160.770 by establishing requirements for administrative hearings and providing guidelines for timeliness and required training of tribunal members.

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

(a) Initially: There will be no additional cost to local school districts, the Kentucky Department of Education, or the Office of Attorney General as a result of this amendment.

(b) On a continuing basis: There will be no additional cost to local school districts, the Kentucky Department of Education, or the Office of Attorney General as a result of this amendment.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment: General funds.

(8) 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: None.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The costs associated with this regulation are dependent upon how many tribunal hearings are requested per each district.

(10) TIERING: Is tiering applied? Tiering is not applied. The regulation applies uniformly.

FISCAL IMPACT STATEMENT

701 KAR 5:090

Contact Person: Todd G. Allen

Phone: 502-564-4474

Email: todd.allen@education.ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 156.070, 161.770, and 161.790.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: KRS 161.790.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Education and Kentucky Department of Education

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: Any expenditures are expected to be minimal.

For subsequent years: Any expenditures are expected to be minimal.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: No cost savings are anticipated.

For subsequent years: No cost savings are anticipated.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): School districts.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: Any expenditures are dependent upon the number of requests for tribunal hearings for each district.

For subsequent years: Any expenditures are dependent upon the number of requests for tribunal hearing for each district.

2. Revenues:

For the first year: This regulation is not expected to generate revenue.

For subsequent years: This regulation is not expected to generate revenue.

3. Cost Savings:

For the first year: No cost savings are anticipated.

For subsequent years: No cost savings are anticipated.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): None.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year: Not applicable.

For subsequent years: Not applicable.

2. Revenues:

For the first year: Not applicable.

For subsequent years: Not applicable.

3. Cost Savings:

For the first year: Not applicable.

For subsequent years: Not applicable.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: Any expenditure is expected to be minimal for the Kentucky Department of Education. The regulation is not expected to generate revenue, and no cost savings are anticipated. Expenditure for each school district will vary dependent upon how many teachers from their district request a tribunal hearing.

(b) Methodology and resources used to reach this conclusion: The estimates herein are based on prior program operations.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14): The administrative regulation is not expected to have a major economic impact.

(b) The methodology and resources used to reach this conclusion: The estimates herein are based on prior program operations.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

701 KAR 5:090 “Kentucky Department of Education Teacher and Administrator Tribunal Member Application” provided as the document incorporated by reference, contains a total of two pages and consists of personal information of applicants for the teacher and administrator tribunal members. KRS 161.790 requires the Kentucky Board of Education to promulgate an administrative regulation which includes a procedure for selection of teacher and administrator tribunal members.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

The “Kentucky Department of Education Teacher and Administrator Tribunal Member Application” consists of an applicant providing personal information and requires each applicant to answer questions about the status of their certificate, employment history and for them to explain why they wish to serve as a tribunal member. Page one was amended for clarity and to update each question to be applicable to both teacher and administrator applicants.