



A Review of the Education Professional Standard's Board Disciplinary Process
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The Education Professional Standards Board (EPSB) is the statutory board responsible for establishing the standards and requirements for obtaining and maintaining a teaching certificate in Kentucky. The EPSB's authorizing statute, Kentucky Revised Statute (KRS) 161.028, was enacted in 1990 as part of the Kentucky Education Reform Act (KERA). Although the EPSB was initially an office within the Kentucky Department of Education, a new agency was created in 2000 to assist the EPSB in accomplishing its statutory mandates and responsibilities.

The EPSB is composed of seventeen (17) members who represent various groups within the education community. The commissioner of education and the president of the Council on Postsecondary Education serve as ex officio voting members of the EPSB. The other fifteen (15) of the seventeen (17) members are appointed by the Governor and confirmed by the General Assembly. KRS 161.028(2)(a) requires that the gubernatorial appointments consist of the following representatives:

- Nine (9) classroom teachers;
- Two (2) administrators, one (1) of whom must be a practicing principal;
- One (1) elected local school board member; and
- Three (3) representatives of post secondary institutions, two (2) from public institutions and one (1) chief academic officer of an independent college or university.

The EPSB currently meets six (6) times a year. The EPSB's agendas and minutes can be found online at www.epsb.ky.gov. Since the EPSB is a governmental entity, all meetings are governed by the Kentucky Open Meetings Act, KRS 61.800 et seq., and are open to the public. During these meetings, the board members establish policy, promulgate regulations and amendments, make waiver and disciplinary decisions, and carry out all other statutory duties. The EPSB's duties include:

- Accrediting educator preparation programs;
- Determining appropriate assessments and establishing test scores;

- Overseeing student teaching, the Kentucky Teacher Internship Program, the National Board Incentive Fund, the Continuing Education Option, and the Kentucky Principal Internship Program;
- Issuing, suspending, and revoking educator certificates;
- Establishing a Professional Code of Ethics

The EPSB adopted the current Professional Code of Ethics for Certified Personnel, 16 Kentucky Administrative Regulation (KAR) 1:020, in 1994 and all certified educators in Kentucky are required to abide by the tenets of the code.

The EPSB's supporting agency staff is divided into the following four (4) divisions: Certification, Educator Preparation, Professional Learning and Assessment, and Legal. Each division is responsible for carrying out the board's policy decisions and ensuring that the EPSB's Goals and Initiatives are met.

THE EPSB DISCIPLINARY PROCESS

The Division of Legal Services’ (Legal Services) primary responsibility is to manage and prosecute disciplinary matters for the EPSB. Legal Services’ full time employees include four (4) attorneys (one (1) of whom is the Director who also serves as the Chief Prosecuting Attorney for the Board) the Board’s Clerk of the court, and an administrative specialist. Legal Services also contracts with two (2) attorneys and one (1) investigator who aid in the prosecution of a growing number of disciplinary cases.

The EPSB’s disciplinary authority is encapsulated in KRS 161.120. The EPSB has also promulgated two regulations regarding disciplinary matters: 16 KAR 1:020, the Professional Code of Ethics for Certified Personnel, and 16 KAR 1:030.


Initiating Disciplinary Cases:

Disciplinary cases are initiated against educators upon receipt of either a report or a complaint of educator misconduct. Each superintendent is responsible for reporting any certified school employee who “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.” See KRS 161.120(1). Legal Services also receives reports from the Cabinet for Health and Family Services, the Kentucky Department of Education, and the Office of Education Accountability. In addition to those educational entities, Legal Services often receives complaints from parents, other educators, law enforcement, the media, and private citizens.

Upon receipt, the complaint or report is reviewed by a staff member who initiates a disciplinary case if there is sufficient information to establish that either an act prohibited by KRS 161.120(1) or a violation of the Code of Ethics may have occurred. The educator is notified by certified mail that a disciplinary case has been initiated and is given thirty (30) days to respond to the allegations in the complaint. Notice is also sent to the educator’s superintendent.

In August of 2004, the EPSB approved displaying pending actions on the EPSB website with access limited to school district administrators. When a case is initiated against an educator, the following notification of a pending complaint appears in the Kentucky Educator Certification Inquiry (KECI) only viewable by superintendents, directors of district personnel, and human resource designees.

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 **Complaint Pending at EPSB for Board Review.**

Credentials

Cred	Description	Effective	Expiration	Restricted To
Do Not Print (00)				
RANK1	Rank I	05-14-1983	--	
Cert Issued (30)				
A80	Area Specialization: Art	--	--	
E80	Endorsement For Elementary School Art	12-22-1970	Lifetime	
ELE	Endorsement For Elementary School Classroom Teaching, Grades 1-8	07-01-1973	Lifetime	
PHB	Provisional High School Certificate, Grades 7-12	12-22-1970	Lifetime	

Note: Suspended and revoked credentials are shown with red text with a strike through line.

The educator is also notified that a case is pending in KECI when he or she logs into the website:

The screenshot displays the 'My Account' page of the EPSB Online Services. At the top, it shows the user's name and ID, along with a dropdown menu for 'EPSB Online Services'. Below this, the user is greeted with 'Welcome, [Name] [edit]' and their email address '[Email]@kyschools.us [edit]'. A warning icon indicates a 'Complaint Pending at EPSB for Board Review.' with a link to see details. The page features two main navigation sections: 'EPSB Online Services' with a list of links including Cooperating Teacher Assignment, Electronic Payment Service, Highly Qualified Calculator, Kentucky Educator Certification Inquiry, KEPP Report Card, My Account, and EPSB Website; and 'What would you like to do today?' with options to Calculate highly qualified status, Compare Teacher Preparation Programs, Update my contact information, and View my certification history. A third section, 'My Online Account Setting', includes links for My Demographic, Password & Hint Questions, and User Agreement.

Probable Cause Review:

One of the main responsibilities of a member of the EPSB is participating in decisions concerning disciplinary action against certificate holders and the ethical fitness of applicants for certification. Prior to each regularly scheduled board meeting, members receive a disciplinary action docket prepared by Legal Services containing the probable cause cases. EPSB members review the information prior to the meeting and consider the information in closed session pursuant to KRS 61.810, which lists the exceptions to the requirements of the Open Meetings Act. Disciplinary matters are exempt from the Open Meetings Act because they are either discussions of proposed or pending litigation or the EPSB is conducting deliberations of judicial or quasi-judicial nature.

At the conclusion of the closed session, the EPSB returns to open session in order to vote on how to proceed with the disciplinary cases. The EPSB may make one of the following determinations with regard to probable cause cases presented:

Dismiss:

The complaint against the educator shall be dismissed. The dismissal may not be based upon the merits of the case, but rather some other aspect, such as weak facts, incomplete reporting, lack of cooperation from witnesses, etc.; therefore subsequent action on this complaint is not prohibited.

Deferral for training:

The evidence presented to the Board indicates that the Respondent would benefit from remedial training. The Board shall defer consideration of this case in order to offer the Respondent an

opportunity to complete the suggested training. If the Respondent provides written proof to the Board that he or she has successfully completed the recommended training, the Board shall dismiss the case.

Admonishment:

The misconduct is not of a serious nature; the evidence presented to the Board provides clear indication that the alleged conduct did in fact occur; and the respondent has had an appropriate opportunity to respond.

Hear:

The evidence, if true, indicates that action should be taken against a certificate.

The EPSB may also **Defer** or pass a case for more information or for the conclusion of a criminal case, tribunal hearing, or other investigation.

Legal Services does not include the Respondent's name, school district, or other information that would enable the identification of the Respondent. If a board member recognizes a fact pattern or believes he or she knows something about the case at hand, and if this knowledge could possibly affect the impartiality of the board member's decision, the board member refrains from commenting on the case and recuses him- or herself when it comes time to vote.

The Hearing Process:

When the Board votes to hear a case or an individual appeals an admonishment, the following steps are usually taken to resolve the matter:

1. The case is assigned to a prosecuting attorney.

Each individual attorney approaches a case differently when assigned. When first assigned a case, the attorney reviews the file to determine what course of action to follow. The EPSB does not receive uniform reports nor does it particularly require any supporting information prior to the presentation of the case for probable cause. The prosecuting attorney has to look at the case with an eye to trying it. In other words, the attorney reviews the file with two questions in mind, "Can I prove the allegations by a preponderance of the evidence?" and "What do I need to prove the allegations by a preponderance of the evidence?"

2. The attorney may conduct further investigation.

If necessary, the attorney may need to contact an investigator to interview witnesses or collect documents. Exactly what type of investigation needs to take place or how to

proceed is decided on a case by case basis. If the case is simply one where the teacher was arrested, then the attorney will need documents pertaining to the arrest and may interview the arresting officer. If the case is something that occurred at school, the attorney may send an investigator to interview the witnesses and collect documentation.

Most cases have been investigated by some other agency, like the police, the school district, or the Cabinet for Health and Family Services (CHFS) before they are received by the EPSB. Collection of those documents is crucial, and although other agencies' findings may elucidate a situation, the EPSB must review facts anew under its own statutes and regulations. The EPSB's burden of proof, preponderance of the evidence, is lower than the burden for criminal prosecutions; therefore, cases that are dismissed by criminal prosecutors may be pursued by the board. Also, conduct that may not meet the statutory definition of abuse or neglect for a CHFS investigation may still be unprofessional conduct for a teacher. Individuals who are not penalized by their school districts, which have to comply with teacher tenure laws, may still have action taken against their certificate if their conduct is prohibited by KRS 161.120 or in violation of the Code of Ethics.

3. The attorney makes an offer to the educator.

After the review and investigation take place, the attorney may then make an offer of settlement to the educator. If the educator is represented by counsel, all communication is directed to the attorney as is required by the rules of professional responsibility governing the legal profession. The settlement process can take a long time and often involves the educator or his attorney's making a counter offer or supplying mitigating evidence for the prosecutor to consider.

If an offer is accepted by the educator, it is then sent to the EPSB for final approval. The EPSB must agree to the terms of the agreement, or the settlement is null and void and the parties go back to the drawing board.

4. If no settlement is reached, the attorney files charges.

Filing charges begins the formal administrative hearing process. EPSB hearings are conducted under KRS Chapter 13B, and a representative from the Attorney General's Office serves as the hearing officer for the board. The prosecutor drafts charges which are sent to the Attorney General's Chief Hearing Officer, the EPSB's clerk of court, the educator, and the educator's attorney. The Chief Hearing Officer assigns a hearing officer and sets an initial pre-hearing conference. At this time, settlement negotiations may still be taking place. Although charges have been filed in a case, a hearing may not occur because the parties may still settle at any time.

If a hearing date is set, the prosecutor must subpoena witnesses and prepare documents for the hearing. Investigators are often used to serve subpoenas. Prior to the hearing and in accordance with the hearing officer's orders, a prehearing memorandum must be filed

with witness and exhibit lists. The EPSB is responsible for securing a court reporter and a place for hearings.

5. A hearing is held.

Administrative hearings are like any other trial, except there is no jury. Opening statements are made, witnesses are called and cross-examined, evidence is entered, and closing statements are made. One significant difference between EPSB hearings and trials is that there is not a verdict until months later.

6. Recommended Order is issued, attorneys prepare exceptions, and the EPSB issues a Final Order.

After the hearing, a transcript is made of the testimony. The hearing officer issues a recommended order within sixty (60) days after the transcript for the hearing is finalized. A recommended order contains the hearing officer's recommended findings of fact, conclusions of law, and any penalty. Attorneys for the parties must file any exceptions to that order within fifteen (15) days after the recommended order is filed. Exceptions are a second chance to argue the case before the EPSB since the board is not bound by the hearing officer's recommended order. The EPSB reviews the recommended order and the exceptions in closed session, and then issues a Final Order.

7. Appeal filed.

The unsuccessful party may appeal a decision by the EPSB to the Franklin Circuit Court for review. Although in theory, the prosecuting attorney for the board could appeal the EPSB's decision, in practice that would not happen. Educators who pursue the process through to the hearing stage usually will appeal an adverse decision. Upon receipt of a ruling by the circuit court, an appeal of right to the Kentucky Court of Appeals may be filed by either party. After that ruling, the aggrieved party may file a petition for discretionary review with the Supreme Court.

Suspensions and Revocations:

The EPSB began placing suspension and revocation dates on the face of an individual’s certificate once the certificate was re-instated or reissued in August of 2004. In November of 2011, the EPSB decided to also include any suspension or revocation dates on the Kentucky Educator Certification Inquiry (KECI) website, <https://wd.kyepsb.net/EPSB.WebApps/KECI/>. Below is a view of how a suspended certificate appears when accessed at KECI.

Credentials

PEEF, PLDF Suspended (From: 03-SEP-11 To: 03-FEB-12)

Any questions about the suspension or revocation should be referred to the Division of Legal Services at 502.564.4606.

Cred	Description	Effective	Expiration	Restricted To
Do Not Print (00)				
RANK2	Rank II	12-13-2003 Invalid Date.	- - Invalid Date.	
Cert Issued (30)				
PEEF	Provisional Certificate For Teaching In The Early Elementary Grades K-4 (And Self- Contained Grades 5-6)	07-01-2009 Invalid Date.	06-30-2014 Invalid Date.	
PLDF	Provisional Certificate For Teachers Of Exceptional Children- -Learning And Behavior Disorders, Grades K-12	07-01-2009 Invalid Date.	06-30-2014 Invalid Date.	

Note: Suspended and revoked credentials are shown with red text with a strike through line.

KRS 161.790 vs. KRS 161.120

A school district may also be a party in an administrative hearing under KRS 161.790 when it wishes to discipline a teacher under contract. These hearings are widely known as “tribunal hearings” because they are decided by a three-member panel consisting of one (1) teacher, one (1) administrator, and one (1) lay person, all whom reside outside the school district.

Unlike KRS 161.120, KRS 161.790 has specific deadlines necessitating when a hearing must take place. An educator has ten (10) days to file a notice of intent to contest the discipline decision, and a hearing shall begin within forty-five (45) days after the notice of intent is filed. In addition, the tribunal hearing the case must render its decision within five (5) days of the conclusion of the hearing. Due to these strict timing requirements, the school district’s discipline will be final prior to the conclusion of the EPSB’s review.

Additionally, the EPSB is not bound by the decision of the superintendent or a tribunal in resolving a disciplinary matter. KRS 161.120(3) states that “a finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation.” Therefore, the hearing officers in EPSB hearings cannot rely on the findings of fact made by a tribunal, but evidence must be presented and heard anew by another fact finder. Obviously, this is frustrating for an individual who may have prevailed during her tribunal hearing but is then found in violation of the Code of Ethics by the EPSB.

The potential bases for taking action against an educator also differ in the two statutes. A teacher contract may only be terminated for the following:

- a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, the Education Professional Standards Board, or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;
- b) Immoral character or conduct unbecoming a teacher;
- c) Physical or mental disability; or
- d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

However, the EPSB may take action against a certificate for any of the following reasons:

- a) Being convicted of, or entering an “Alford” plea or *nolo contendere* to, notwithstanding an order of probation or suspending of a sentence following a conviction or entry of the plea, one of the following:
1. A felony
 2. A misdemeanor involving a student or minor
 3. A misdemeanor under enumerated chapters of the KRS involving:
 - drugs
 - abuse
 - kidnapping and related offenses
 - disorderly conduct and related offenses
 - abuse of public office
 - sexual offenses and prostitution
 - family offenses including incest and flagrant non-support
 - sexual exploitation of minors
- b) Sexual contact with a student or minor
- c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct
- d) Demonstrating willful or careless disregard for the health, welfare, or safety of others
- e) Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;
- f) Possessing, using, or being under the influence of alcohol, which impairs the performance of duties;
- g) Unlawfully possessing or unlawfully using a drug during the performance of duties;
- h) Incompetency or neglect of duty;
- i) Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;
- j) Failure to comply with duty to report;
- k) Failing to comply with an order of the EPSB;
- l) Violating any state statute relating to schools or the teaching profession;
- m) Violating the Professional Code of Ethics established by the EPSB;

- n) Violating any administrative regulation promulgated by the EPSB or the Kentucky Board of Education; or
- o) Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation as outlined above.

Many provisions overlap; however, there are many instances where the EPSB may be able to take action, but the school district is prohibited from breaking the contract. Therefore, additional charges may occur in an EPSB hearing that cannot be brought in a tribunal hearing and additional evidence may need to be presented.

Tribunal hearings and EPSB hearings are parallel proceedings. Due to the timing requirements, school districts will rarely have the ability to use information gleaned from the EPSB's investigation during their tribunals. Although EPSB hearings occur after the conclusion of the tribunal hearing, the tribunal's decision cannot be used in lieu of the EPSB's hearing.

SUPERINTENDENT'S DUTY TO REPORT

All superintendents in Kentucky's 174 public school districts have a statutory duty to report misconduct of a certified educator to EPSB:

- Within 30 days of the event giving rise to the duty to report
- Without regard to any disciplinary action or lack thereof by the superintendent
- Failure of the superintendent to report may be cause for the suspension or revocation of the certificate of the superintendent

The superintendent's report to the EPSB must be in writing and should contain "the full facts and circumstances" regarding the alleged misconduct. In addition to the name of the educator or educators, the superintendent also needs to supply the address, phone number, Social Security number, and position name. If the educator is an emergency substitute, the superintendent should also send in the TC-4 form completed by the educator when he or she applied for the position.

In addition, pursuant to KRS 620.030, *all persons* who know or have "reasonable cause to believe that a child is dependent, neglected or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Kentucky state police; the cabinet or its designated representative; the commonwealth's attorney or county attorney." If requested, the individual must make a written report within 48 hours of the original report.

The case of Commonwealth v. Allen, 980 S.W. 2d 278 (Ky. 1998) held that a report by a teacher or counselor to his or her supervisor does not satisfy the statutory duty to report.

The recipient of the report shall immediately notify the cabinet or its designated representative, local or state law enforcement, or Commonwealth's or county attorney of the receipt of the report. Pursuant to KRS 620.040 (4), school personnel do not have the authority to conduct internal investigations in lieu of the official investigations conducted by the cabinet, law enforcement.

In accordance with KRS 620.050, anyone acting upon reasonable cause in the making of a report or acting under these provisions "in good faith" shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed.

APPENDIX

161.120 Disciplinary actions relating to certificates -- Appeals.

(1) Except as described in KRS 161.795, the Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees for the following reasons:

(a) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, notwithstanding an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) of the following:

1. A felony;
2. A misdemeanor under KRS Chapter 218A, 508, 509, 510, 522, 525, 529, 530, or 531; or
3. A misdemeanor involving a student or minor.

A certified copy of the conviction or plea shall be conclusive evidence of the conviction or plea;

(b) Having sexual contact as defined in KRS 510.010(7) with a student or minor. Conviction in a criminal proceeding shall not be a requirement for disciplinary action;

(c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct. If the act constitutes a crime, conviction in a criminal proceeding shall not be a condition precedent to disciplinary action;

(d) Demonstrating willful or careless disregard for the health, welfare, or safety of others;

(e) Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;

(f) Possessing, using, or being under the influence of alcohol, which impairs the

- performance of duties;
- (g) Unlawfully possessing or unlawfully using a drug during the performance of duties;
 - (h) Incompetency or neglect of duty;
 - (i) Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;
 - (j) Failing to report as required by subsection (2) of this section;
 - (k) Failing to comply with an order of the Education Professional Standards Board;
 - (l) Violating any state statute relating to schools or the teaching profession;
 - (m) Violating the professional code of ethics for Kentucky school certified personnel established by the Education Professional Standards Board through the promulgation of administrative regulation;
 - (n) Violating any administrative regulation promulgated by the Education Professional Standards Board or the Kentucky Board of Education; or
 - (o) Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation of this subsection.
- (2) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, address, phone number, Social Security number, and position name of any certified school employee in the employee's district whose contract is terminated or not renewed, for cause except failure to meet local standards for quality of teaching performance prior to the employee gaining tenure; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who otherwise 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 under subsection (1) of this section. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty

(30) days of the event giving rise to the duty to report.

(b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, that may warrant action against the certificate under subsection (1) of this section, and shall forward copies of all relevant documents and records in his possession.

(c) The Education Professional Standards Board may consider reports and information received from other sources.

(d) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent or other sources. The employee shall have the right to file a written rebuttal to the report which shall be placed in the official file with the report.

(3) A finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation of subsection (1) of this section.

(4) The board may issue a written admonishment to the certificate holder if the board determines, based on the evidence, that a violation has occurred that is not of a serious nature. A copy of the written admonishment shall be placed in the official file of the certificate holder. The certificate holder may respond in writing to the admonishment within thirty (30) days of receipt and have that response placed in his official certification file. Alternatively, the certificate holder may file a request for a hearing with the board within thirty (30) days of receipt of the admonishment. Upon receipt of a request for a hearing, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(5) (a) The Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B:

1. Before revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate;
2. After denying an application for a certificate, upon written request filed within thirty (30) days of receipt of the letter advising of the denial; or

3. After issuing a written admonishment, upon written request for a hearing

filed within thirty (30) days of receipt of the written admonishment.

(b) Upon request, a hearing may be public or private at the discretion of the certified employee or applicant.

(c) The hearing shall be conducted before the full board, a panel of three (3) members of the board, or a person appointed as hearing officer by the board pursuant to KRS 13B.030(1).

(6) The Education Professional Standards Board or its chair may take emergency action pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's contract or tenure rights in the school district.

(7) If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student or minor, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student or minor which are needed as a result of the sexual contact.

(8) At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the certificate holder.

(9) The board may reconsider, modify, or reverse its decision on any disciplinary action.

(10) Suspension of a certificate shall be for a specified period of time, not to exceed two (2) years.

(a) At the conclusion of the specified period, upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the certificate shall be reactivated.

(b) A suspended certificate is subject to expiration and termination.

(11) Revocation of a certificate is a permanent forfeiture. The board shall establish the minimum period of time before an applicant can apply for a new certificate.

- (a) At the conclusion of the specified period, and upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the applicant shall bear the burden of proof to show that he or she is again fit for practice.
 - (b) The board shall have discretion to impose conditions that it deems reasonably appropriate to ensure the applicant's fitness and the protection of public safety. Any conditions imposed by the board shall address or apply to only that time period after the revocation of the certificate.
- (12) An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court in accordance with KRS Chapter 13B.

161.175 Teachers involved in illegal use of controlled substances.

(1) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, a teacher who has been reprimanded or otherwise disciplined by the teacher's employer because the teacher engaged in misconduct involving the illegal use of controlled substances shall, as a condition of retaining employment, submit to random or periodic drug testing in accordance with administrative regulations promulgated by the Kentucky Board of Education for a period not to exceed twelve (12) months from the date such reprimand or disciplinary action occurred.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, a teacher whose certificate has been suspended or revoked by the Education Professional Standards Board because the teacher engaged in misconduct involving the illegal use of controlled substances shall, as a condition of reinstatement or reissuance of the certificate, submit to drug testing in accordance with administrative regulations promulgated by the Education Professional Standards Board.

(3) No teacher may be subject to drug testing under this section unless and until it has been determined in an administrative or judicial proceeding that the teacher engaged in misconduct involving the illegal use of controlled substances.

(4) For purposes of this section, the term "teacher" shall mean any person for whom certification is required as a basis for employment in the public schools of the Commonwealth.

(5) Nothing in this section shall be interpreted or construed to limit the authority of the Education Professional Standards Board to impose or require additional conditions for the reissuance or reinstatement of a certificate.

(6) The administrative regulations promulgated pursuant to this section shall contain provisions that ensure due process under the law.

161.780 Termination of contract by teacher or superintendent -- Resignation binding as of date of acceptance.

(1) No teacher shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the superintendent. No superintendent shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the employing board of education. A teacher shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing superintendent. A superintendent shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing board of education. Upon complaint by the employing board or superintendent to the Education Professional Standards Board, the certificate of a teacher or superintendent terminating his contract in any manner other than provided in this section may be suspended for not more than one (1) year, pursuant to the hearing procedures set forth in KRS 161.120.

(2) If a teacher voluntarily resigns his contract during the school term, the resignation shall be in writing and shall become binding on the date the resignation is accepted by the superintendent. No further action by the employing board is necessary. The resignation is effective on the date specified in the letter of resignation. A resignation, once accepted, may be withdrawn only with the approval of the employing board of education. Nothing in this subsection shall release the teacher from liability to the local board of education for breach of contract.

**161.790 Termination of contract by board -- Administrative hearing tribunal --
Sanctions.**

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

- (a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, the Education Professional Standards Board, or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;
- (b) Immoral character or conduct unbecoming a teacher;
- (c) Physical or mental disability; or
- (d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

(2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made under KRS 158.6455.

(3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the commissioner of education and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

(4) Except as provided in KRS 163.032, upon receiving the teacher's notice of his intention to answer the charge, the commissioner of education shall appoint a three (3) member tribunal, consisting of one (1) teacher, who may be retired, one (1)

administrator, who may be retired, and one (1) lay person, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. Priority for selection as a tribunal member shall be from a pool of potential tribunal members who have been designated and trained to serve as tribunal members on a regular and ongoing basis, pursuant to administrative regulations promulgated by the Kentucky Board of Education. Funds appropriated to the Department of Education for professional development may be used to provide tribunal member training. The commissioner of education shall name the chairman and set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge.

(5) A hearing officer shall have final authority to rule on dispositive prehearing motions.

(6) The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the commissioner of education shall preside with authority to rule on procedural matters, but the tribunal shall be the ultimate trier of fact. The local board shall pay each member of the tribunal a per diem of one hundred dollars (\$100) and travel expenses.

(7) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. Provisions of KRS Chapter 13B notwithstanding, the tribunal decision shall be a final order and may be rendered on the record.

(8) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.

(9) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B. The review of the final order shall be conducted by the Circuit Court as required by KRS 13B.150.

(10) As an alternative to termination of a teacher's contract, the superintendent upon

notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply if the teacher is suspended without pay or publicly reprimanded. The teacher may appeal the action of the superintendent if these sanctions are imposed in the same manner as established in subsections (4) to (9) of this section. Upon completion of a suspension period, the teacher may be reinstated.

620.030 Duty to report dependency, neglect, or abuse.

(1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.

(2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer, or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected, or abused, regardless of whether the person believed to have caused the dependency, neglect, or abuse is a parent, guardian, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties shall, if requested, in addition to the report required in subsection (1) of this

section, file with the local law enforcement agency or the Department of Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:

(a) The names and addresses of the child and his or her parents or other persons exercising custodial control or supervision;

(b) The child's age;

(c) The nature and extent of the child's alleged dependency, neglect, or abuse, including any previous charges of dependency, neglect, or abuse, to this child or his or her siblings;

(d) The name and address of the person allegedly responsible for the abuse or neglect; and

(e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.

(3) The cabinet upon request shall receive from any agency of the state or any other agency, institution, or facility providing services to the child or his or her family, such cooperation, assistance, and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.

16 KAR 1:020. Professional code of ethics for Kentucky school certified personnel.

RELATES TO: KRS 161.028, 161.040, 161.120

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that the Education Professional Standards Board develop a professional code of ethics. This administrative regulation establishes the code of ethics for Kentucky school certified personnel and establishes that violation of the code of ethics may be grounds for revocation or suspension of Kentucky certification for professional school personnel by the Education Professional Standards Board.

Section 1. Certified personnel in the Commonwealth:

(1) Shall strive toward excellence, recognize the importance of the pursuit of truth, nurture democratic citizenship, and safeguard the freedom to learn and to teach;

(2) Shall believe in the worth and dignity of each human being and in educational opportunities for all;

(3) Shall strive to uphold the responsibilities of the education profession, including the following obligations to students, to parents, and to the education profession:

(a) To students:

1. Shall provide students with professional education services in a nondiscriminatory manner and in consonance with accepted best practice known to the educator;

2. Shall respect the constitutional rights of all students;

3. Shall take reasonable measures to protect the health, safety, and emotional well-being of students;

4. Shall not use professional relationships or authority with students for personal advantage;

5. Shall keep in confidence information about students which has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law;

6. Shall not knowingly make false or malicious statements about students or colleagues;

7. Shall refrain from subjecting students to embarrassment or disparagement; and

8. Shall not engage in any sexually related behavior with a student with or without consent, but shall maintain a professional approach with students. Sexually related behavior shall include such behaviors as sexual jokes; sexual remarks; sexual kidding or teasing; sexual innuendo; pressure for dates or sexual favors; inappropriate physical touching, kissing, or grabbing; rape; threats of physical harm; and sexual assault.

(b) To parents:

1. Shall make reasonable effort to communicate to parents information which should be revealed in the interest of the student;

2. Shall endeavor to understand community cultures and diverse home environments of students;

3. Shall not knowingly distort or misrepresent facts concerning educational issues;

4. Shall distinguish between personal views and the views of the employing educational agency;

5. Shall not interfere in the exercise of political and citizenship rights and responsibilities of others;

6. Shall not use institutional privileges for private gain, for the promotion of political candidates, or for partisan political activities; and

7. Shall not accept gratuities, gifts, or favors that might impair or appear to impair professional judgment, and shall not offer any of these to obtain special advantage.

(c) To the education profession:

1. Shall exemplify behaviors which maintain the dignity and integrity of the profession;

2. Shall accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities;

3. Shall keep in confidence information acquired about colleagues in the course of employment, unless disclosure serves professional purposes or is required by law;

4. Shall not use coercive means or give special treatment in order to influence professional decisions;

5. Shall apply for, accept, offer, or assign a position or responsibility only on the basis of professional preparation and legal qualifications; and

6. Shall not knowingly falsify or misrepresent records of facts relating to the educator's own qualifications or those of other professionals.

Section 2. Violation of this administrative regulation may result in cause to initiate proceedings for revocation or suspension of Kentucky certification as provided in KRS 161.120 and 704 KAR 20:585. (21 Ky.R. 2344; eff. 5-4-95; recodified from 704 KAR 20:680, 7-2-2002.)

16 KAR 1:030. Procedures for certificate revocation, suspension, reinstatement and reissuance, and application denial.

RELATES TO: KRS 161.028(1), 161.120, 218A.010(5)

STATUTORY AUTHORITY: KRS 161.028(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring a teacher whose certificate has been suspended or revoked by the Education Professional Standards Board because the teacher engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. This administrative regulation identifies the conditions for initiating a disciplinary action against a teaching or administrative certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Initiating Disciplinary Action Against a Certificate. The Education Professional Standards Board may initiate disciplinary action against a Kentucky teaching or administrative certificate upon receipt from any source of a report or complaint which contains allegations that an individual who holds a Kentucky teaching or administrative certificate has engaged in conduct listed in KRS 161.120(1).

Section 2. Reinstatement and Reissuance of Certificate. (1)(a) A certificate that has been suspended by the Education Professional Standards Board shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the Education Professional Standards Board.

(b) If a certificate lapses during a period of suspension, at the end of the suspension period and upon completion of all conditions and requirements ordered by the Education Professional Standards Board, the certificate holder shall apply for renewal of the certificate and shall meet all educational requirements for renewal of the certificate.

(2) An individual whose certificate has been revoked shall complete the "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010, prior to the reissuance of the certificate.

(3) The burden of proving suitability for reissuance of a revoked certificate shall rest on the applicant seeking reinstatement.

(4) If reissuing a certificate, the Education Professional Standards Board may include terms and conditions that the board reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(11)(b).

(5) An applicant for reissuance of a revoked certificate shall satisfy all current educational requirements for the certificate.

(6)(a) If a certificate is suspended or revoked because the certificate holder engaged in misconduct involving the illegal use of a controlled substance as defined in KRS 218A.010(5), in addition to conditions for reinstatement or reissuance, the certificate holder shall at the certificate holder's own expense provide written evidence that the certificate holder has submitted to a drug test administered by a drug testing facility approved by the Education Professional Standards Board within thirty (30) days of reinstatement or submission of an application for reissuance of the certificate.

(b) If the results of the drug test indicate drug use by the certificate holder, the certificate shall not be reinstated or reissued.

(c) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the Education Professional Standards Board.

(d) A drug test conducted under this subsection shall at a minimum test for the following controlled substances:

1. Marijuana;
2. Cocaine;
3. Opiates;
4. Amphetamines;
5. Phencyclidene;
6. Morphine;
7. MDMA (Ecstasy);
8. Methadone;

- 9. Benzodiazepines;
- 10. Barbiturates; and
- 11. Oxycodone.

(e)1. A certificate holder subject to the terms of this subsection may petition the Education Professional Standards Board to approve a drug testing facility of the certificate holder's choice.

- 2. The petition shall contain the following information:
 - a. The drug testing facility's name and location;
 - b. The name and telephone number for the director of the facility;
 - c. The method of test specimen collection;
 - d. The drug testing facility's method of assuring identity of the test subject;
 - e. Procedures for testing specimens, including forensic testing methods; and
 - f. Chain of custody protocols.

Section 3. Denial of Application for a Certificate. If the Education Professional Standards Board denies an individual's application for a Kentucky teaching or administrative certificate pursuant to this administrative regulation, the individual may file an appeal in accordance with KRS 161.120(5)(a)2. (19 Ky.R. 1264; Am. 1599; 1751; eff. 2-4-93; 20 Ky.R. 633; eff. 11-4-93; 23 Ky.R. 3617; 4124; eff. 6-16-97; recodified from 704 KAR 20:585, 7-2-2002; 33 Ky.R. 3423; 34 Ky.R. 9; eff. 7-19-2007.)

Education Professional Standards Board

DETERMINING PROBABLE CAUSE TO TAKE DISCIPLINARY ACTION PROCEDURE

Amended November 19, 2007

(Approved August 26, 2002)

Pursuant to KRS 161.120(1), the Education Professional Standards Board (hereinafter “the Board”) may take disciplinary action against certified educators. Superintendents have a duty to report misconduct within 30 days of the incident and may be subject to disciplinary action for failing to so report. In addition, other sources may submit complaints to the Board’s legal staff. Legal staff shall initiate a disciplinary case when the allegation in the report or complaint establishes an act prohibited by KRS 161.120 (1).

Upon opening a disciplinary case, the legal staff sends the educator (“respondent”) a copy of the complaint received and he or she is advised in writing of the right to submit any rebuttal material within 30 days. The respondent also has the ability to request a delay in submitting a rebuttal. (This is frequently the case when an employment tribunal or concurrent civil or criminal trial is involved.) Board policy is to authorize legal staff to grant such requests at their discretion and for good cause.

Following receipt of a rebuttal or the expiration of the time limit for its submission, the initial case is presented by legal staff at the next regularly scheduled board meeting. At that time, if the Board does not request further information, it makes one of the following “probable cause” determinations:

Dismiss: The complaint against the educator shall be dismissed. The dismissal may not be based upon the merits of the case, but rather some other aspect, such as weak facts, incomplete reporting, lack of cooperation from witnesses, etc.; therefore, subsequent action on this complaint is not prohibited.

Deferral for training: The evidence presented to the Board indicates that the Respondent would benefit from remedial training. The Board shall defer consideration of this case in order to offer the Respondent an opportunity to complete the suggested training. If the Respondent provides written proof to the Board that he or she has successfully completed the recommended training, the Board shall dismiss the case.

Admonish: The evidence presented to the Board provides a clear indication that the alleged misconduct did in fact occur; however, it is not serious enough to warrant a suspension of the certificate. The Board issues a written admonishment to the educator with a copy to his or her superintendent.

Refer to Hearing: The evidence, if true, would indicate that punitive action should be taken against the certificate. Legal staff shall further investigate the allegations and proceed toward an administrative hearing in accordance with KRS 13B.

Education Professional Standards Board

CHARACTER AND FITNESS APPLICATIONS PROCEDURE

Approved August 26, 2002

Pursuant to KRS 161.028(1)(a), the Education Professional Standards Board (“the Board”) is responsible for establishing standards and requirements for obtaining and maintaining a certificate. Accordingly, all applicants for initial certification and renewal are required to submit a Character and Fitness application. Therein, the applicant is asked several questions pertaining to past convictions or disciplinary action in relation to past employment. Any “yes” answer requires that the Board approve the application. All such applications are submitted to Legal Services staff and a summary of the self-reported details is prepared and presented at the next regularly-scheduled board meeting.

In evaluating Character and Fitness applications, there are no grounds for automatic denial of *certification*. However, KRS 160.380(3) prohibits a superintendent from *hiring* a violent offender or a person convicted of a felony sex crime.

The Board considers, among other things, the nature of the offense, if any children or minors were involved, if any violence or drugs were involved, how long ago the event occurred, the age of the applicant at the time of the offense, and if any terms of a sentence or probation were fulfilled. The Board then determines whether to approve or deny the application. (The Board may also ask for additional information before making its decision.)

The applicant is advised of the Board decision by letter. In the event the application is denied, the applicant is further advised of his or her right to a hearing pursuant to KRS 161.120(5)(a)2. If an applicant exercises that right, the case proceeds along the same course as a disciplinary case, culminating in Findings of Fact, Conclusions of Law, and a Final Order.

Education Professional Standards Board

2011-2012 Goals and Strategies

Vision Statement

Every public school teacher and administrator in Kentucky is an accomplished professional committed to helping all children become productive members of a global society.

Mission Statement

The Education Professional Standards Board, in full collaboration and cooperation with its education partners, promotes high levels of student achievement by establishing and enforcing rigorous professional standards for preparation, certification, and responsible and ethical behavior of all professional educators in Kentucky.

Goal 1:

Every approved educator preparation program meets or exceeds all accreditation standards and prepares knowledgeable, capable teachers and administrators who demonstrate effectiveness in helping all students reach educational achievement.

Strategy 1.1. Maintain regular and rigorous reviews of all program quality indicators.

Strategy 1.2. Document and publish information on the quality of each preparation program.

Strategy 1.3. Provide technical assistance to support program improvement.

Strategy 1.4. Utilize research to inform program improvements.

Strategy 1.5. Review programs to ensure focus on student learning.

Strategy 1.6. Maintain a focus on continuous improvement of all preparation programs.

Strategy 1.7. Provide accurate and reliable data to support decision making.

Goal 2:

Every professional position in a Kentucky public school is staffed by a properly credentialed educator.

Strategy 2.1. Document every assignment of educators in Kentucky public schools.

Strategy 2.2. Document the highly qualified status of all Kentucky teachers as required under NCLB.

Strategy 2.3. Monitor the validity and reliability of teacher and administrator assessments.

Strategy 2.4. Document and publish the results of all assessments required of new teachers and new administrators.

Strategy 2.5. Maintain a focus on continuous improvement of all traditional and alternative route certification procedures and processes.

Strategy 2.6. Provide accurate and reliable data to support decision making.

Goal 3:

Every credentialed educator exemplifies behaviors that maintain the dignity and integrity of the profession by adhering to established law and EPSB Code of Ethics.

Strategy 3.1. Promote awareness of the EPSB Code of Ethics.

Strategy 3.2. Maintain an accurate database of misconduct and character and fitness cases.

Strategy 3.3. Present in a timely manner all cases for review by the EPSB.

Strategy 3.4. Maintain a focus on continuous improvement of all hearing procedures.

Strategy 3.5. Provide accurate and reliable data to support decision making.

Goal 4:

Every credentialed educator participates in a high quality induction into the profession and approved educational advancement programs that support effectiveness in helping all students achieve.

Strategy 4.1. Develop and utilize reliable measures of teacher effectiveness and student achievement that may be used in evaluation of induction and professional advancement activities.

Strategy 4.2. Ensure that every new teacher and principal has a high quality induction experience while demonstrating knowledge and skills that support student learning.

Strategy 4.3. Ensure that high quality mentoring and support services are provided for teachers seeking National Board for Professional Teaching Standards certification.

Strategy 4.4. Ensure that the Continuing Education Option for rank change program maintains appropriate rigor while demonstrating advanced knowledge and skills that support student learning.

Strategy 4.5. Provide accurate and reliable data to support decision making.

Goal 5:

The EPSB shall be managed for both effectiveness and efficiency, fully complying with all statutes, regulations and established federal, state, and agency policies.

Strategy 5.1. Maintain a qualified and diverse EPSB workforce.

Strategy 5.2. Ensure that all personnel are experiencing life-long learning and professional experiences that support their professional growth.

Strategy 5.3. Seek full funding for all EPSB operations, personnel, and programs through an approved biennial budget request.

Strategy 5.4. Provide semiannual budget reports to the EPSB.

Strategy 5.5. Maintain facilities, equipment, and agency technology that support efficient and productive agency operations.