

Education Professional Standards Board

PROCEDURES RELATING TO BOARD ACTION ON AN EDUCATOR'S CERTIFICATION

Section 1 Types of Actions

APPROVED: April 10, 2017

- I. In order to support the mission of the Education Professional Standards Board¹, the Board may take action against an educator's certificate in an effort to either 1) ensure that an educator has an understanding of an educator's professional duties and responsibilities; and/or 2) protect students, parents of students, school personnel, or school officials. The Board is authorized to take the actions set forth below.
 - A. **Admonishment:** an admonishment (or reprimand²) is a formal written censure that is placed in the case file of the educator. It is considered appropriate for violations of statute or law that are not serious in nature. KRS 161.120(4).
 - B. **Suspension:** a suspension is a process by which the Board temporarily deactivates an educator's certification for a specified period of time, not to exceed two years. KRS 161.120(10). At the conclusion of the specified period of time, the EPSB staff is required to reactivate the educator's certificate upon a demonstration that the educator has complied with any reinstatement conditions that may be set forth in an Agreed Order or Final Order. KRS 161.120(10).
 - C. **Revocation:** a revocation is a permanent forfeiture of an educator's certification. The Board is required to establish the minimum period of time before an applicant can reapply for a new certificate. KRS 161.120(11). Once the period of time has expired, the Board may consider a former educator's re-application for certification upon demonstration by the applicant that the former educator is again fit for practice. KRS 161.120(11).
 - D. **Probationary or Supervisory Conditions:** the Board also has the authority to impose probationary or supervisory conditions upon an educator's certificate. KRS 161.120(1). This authority shall include the authority to require training.
 - E. **Surrender:** a surrender occurs when an educator voluntarily agrees to a permanent forfeiture of the educator's certificate.
- II. The Board may initiate any combination of the actions listed above regarding any certificate or license issued under KRS 161.010 to 161.100 for any of the reasons set forth in KRS 161.120(1).

¹The Board shall be used to refer to the board and the EPSB shall be used to refer to the agency.

²For the purpose of KRS 161.120, the EPSB considers an admonition and a reprimand to be synonymous.

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Section 2

Intake and Review of Reports and Complaints

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- I. **Intake.** The EPSB receives reports or complaints alleging conduct listed in KRS 161.120(1), KRS 161.120(2)(a) and 161.120(2)(c).
 - A. Superintendents of local school districts have a duty pursuant to KRS 161.120(2) to file with the EPSB reports in writing that contain the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct that might reasonably warrant action against an educator's certificate under KRS 161.120(1).
 1. A superintendent's duty to report includes reporting those convictions committed by an educator that occurred prior to the date an educator's certificate was issued. KRS 161.120(2)(b).
 - a) A superintendent must submit a report to the EPSB within 30 days of the event giving rise to the duty to report. KRS 161.120(2)(a).
 - b) If the event giving rise to the duty to report relates to an educator's criminal conviction, then the superintendent must submit a report to the EPSB within 30 days after the superintendent or designee became aware of the criminal conviction.
 - c) The duty to report exists without regard to any disciplinary action, or lack thereof, by the superintendent. KRS 161.120(2)(a).
 - B. Pursuant to KRS 161.120(2)(c), the EPSB may consider complaints or reports from any other source, but the EPSB will only accept written, signed complaints.
- II. **Review.** The EPSB's Executive Director and the EPSB staff will review all reports and complaints to determine whether the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred.
 - A. If the report or the complaint contains insufficient credible evidence that conduct may have occurred that would constitute a violation of KRS 161.120(1), the EPSB staff will gather additional information or facts through public sources.
 - B. After an attempt has been made to obtain additional information or facts from public sources, the EPSB's Executive Director and the EPSB staff will re-evaluate the report or complaint to determine if there is sufficient credible evidence to establish that a violation of KRS 161.120(1) may have occurred. If there is still

insufficient credible evidence that a violation of KRS 161.120(1) has occurred, no further action will be taken, but the report or complaint will be kept on file in the event additional information is received.

1. Reports or complaints that relate to an educator where there is insufficient credible evidence that a violation of KRS 161.120(1) occurred will be kept on file for five (5) years from the date the EPSB's Executive Director and the EPSB staff determined there is insufficient evidence that a violation occurred.
2. Reports or complaints that relate to a non-certified individual will be kept on file for one (1) year after the notification of the death of that individual.
3. Reports or complaints kept on file are not subject to disclosure pursuant to KRS 61.878(1)(h). See OAG 91-198.

III. Notice to Educator.

- A. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, the EPSB staff will open a case file and assign that file a number.
 1. If multiple reports or complaints are received regarding an educator before any action is taken by the Board, all of the reports and/or complaints will be consolidated into a single case file;
 2. If multiple reports or complaints are received regarding an educator after the Board has issued a dismissal; a deferral for training; an admonishment (and the educator has not requested that the matter be referred to hearing); or an admonishment with training (and the educator has not requested that the matter be referred to hearing) and the matter is otherwise closed, the reports or complaints will be given a new case file number; or
 3. If an additional report or complaint is received by the EPSB staff after the Board has referred the matter for Attorney Review and Investigation, the additional report or complaint will be consolidated with the existing case file.

When a complaint or report is consolidated with an existing case file, a copy of the complaint or report will be sent to the educator or the educator's attorney. The educator or the educator's attorney will be given the opportunity to submit a rebuttal. If a rebuttal is submitted, it will be included in the educator's case file.

B. When a case file is opened, the EPSB staff shall ensure that the educator is served with a copy of the written complaint or report alleging violations of KRS 161.120(1) along with a Notification of Report or Complaint (Notification) to the educator's last known address on file with the EPSB. The Notification shall:

1. Notify the educator that the EPSB has received a report or complaint pursuant to KRS 161.120(1);
2. Provide the educator with a copy of the report or complaint;
3. Notify the educator that the educator has thirty (30) days from the date the educator receives the Notification to provide the EPSB with a written rebuttal.
4. Notify the educator that the Board will review the report or complaint and written rebuttal to determine whether further action is necessary.
5. Notify the educator that the report or complaint is deemed confidential and should not be disclosed by the educator for any other purpose other than for preparing a rebuttal.
6. Notify the educator that all names, addresses, and counties will be redacted in order to protect the confidentiality of the educator and witnesses.

IV. The educator shall have the right to file a rebuttal with the EPSB within thirty (30) days from the date the educator receives the complaint or report from the EPSB, unless the parties agree to extend the time.

V. The EPSB staff shall add the case to the EPSB's docket and prepare the case file for the Board to review by redacting all the educator's identifiers if one (1) of the following occurs:

1. the educator's rebuttal is received;
2. the Notice is returned as undeliverable; or
3. the educator:
 - a) fails to file a rebuttal with the EPSB; and
 - b) has not requested to extend the thirty (30) day deadline.

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**Section 3
Board Action on Reports and Complaints**

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- I. In advance of each of its regularly scheduled Board meetings, the Board will receive summaries of the Reports and Complaints as well as redacted copies of the full corresponding written rebuttals for those matters it will be reviewing at the Board meeting.
 - A. If a member of the Board wants to review redacted copies of actual Reports and/or Complaints at the Board meeting, the Board member shall be given access to the full redacted case file on the day of the Board meeting.
 - B. To the greatest extent possible, the Board member wishing to access the redacted case file shall make a request to the Executive Director, in advance of the Board meeting to give the EPSB staff sufficient time to redact the case file.

- II. **Board Review.** At each regularly scheduled Board meeting, the Board will discuss the Reports and Complaints in closed session.
 - A. When making a determination as to how to proceed, the Board shall consider the following factors:
 1. the seriousness of the alleged violation;
 2. whether the alleged misconduct was premeditated or intentional;
 3. attempted concealment of alleged misconduct;
 4. prior misconduct;
 5. whether training is appropriate to prevent further violations;
 6. whether the sanction is necessary to deter future violations; and
 7. any other relevant circumstances or facts.

 - B. Permanent revocation may be warranted in some cases. Examples of some cases where permanent revocation may be warranted may include, but are not limited to, the following scenarios:
 1. engaged in any sexual contact with a student or minor;
 2. solicited any sexual contact with a student or minor;
 3. possessed or distributed child pornography;
 4. was registered as a sex offender;
 5. committed criminal homicide;
 6. transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at

least a Class A misdemeanor under the Kentucky Revised Statutes, Chapter 218A, on school property; or

7. sanctioned misconduct in another jurisdiction. The findings of fact contained in final orders from any other jurisdiction may provide the factual basis for EPSB action, if the underlying conduct for the administrative sanction of an educator's certificate or license issued in another jurisdiction is a violation of Kentucky law.

III. Board Action. The Board may take action upon confirmation that a quorum exists. If a quorum exists, the Board may take one of the following actions by majority vote:

A. **Deferral.** Deferral is appropriate when more information is needed before the Board can take action; the report or complaint will only be deferred until the next Board meeting.

1. If, by majority vote, the Board decides that it would like additional information before taking any further action, the Board shall direct the EPSB staff to gather additional information from the reporting school district and/or from public sources and bring the case back before the Board as part of the Docket.
2. The EPSB staff shall either provide the additional information sought by the Board at the next regularly scheduled Board meeting or, if the additional information is not available by the next regularly scheduled Board meeting, the EPSB staff shall be prepared to update the Board as to when the EPSB staff anticipates that the additional information will be received.
3. A deferral does not constitute a final action.

B. **Dismissal.** Dismissal is based on other factors including, but not limited to, lack of evidence, incomplete reporting, and refusal by witnesses to co-operate. A dismissal at this juncture does not prohibit the alleged conduct from being the subject of a new report or complaint brought back before the Board.

1. An Order of Dismissal constitutes final action.
2. The Board reserves the right to review the case file at a later date should additional information be received in the future.
3. Orders of Dismissal are filed as part of the case file. Pursuant to the EPSB's Records Retention Schedule, Educator Disciplinary Records must be retained one (1) year after notification of the educator's death.

C. **Deferral for Training.** Deferral for Training is appropriate when the Board determines that additional professional development of an educator is warranted. The Board shall require the educator to undergo specific training within a specific time period. Upon completion of training, the educator will be required to present written proof of training to the Board. The Board will then enter an Order of

Dismissal if satisfied that the educator has satisfied the training requirement.

1. If the educator fails to either complete training or fails to provide evidence to the Board of completed training during the required timeframe, the EPSB staff will put the case back on the Docket for possible further action by the Board.
2. Deferral for Training does not constitute final action.

D. **Admonishment.** The Board may issue a written admonishment to the educator if the Board determines, based on the evidence, a violation has occurred, but the violation is not of a serious nature. KRS 161.120(4).

1. The EPSB staff shall send a copy of the written admonishment to the educator's address on file with the EPSB.
2. Upon receipt of the written admonishment, the educator may:
 - a. Accept the written admonishment;
 - b. Accept the written admonishment, but provide a response within thirty (30) days of receipt of the admonishment and have it placed in the educator's case file along with the written admonishment; or
 - c. Not accept the written admonishment and, within thirty (30) days of receipt of the admonishment, request that the matter be referred to hearing. Upon receipt of the request for hearing, the Board will set the admonishment aside and will refer the matter to a hearing.
3. Once the period of time for the educator to respond has ended, the EPSB shall take one of the following actions:
 - a. If the educator accepts the admonishment, the EPSB will place the admonishment and the educator's response (if any) in the educator's case file; or
 - b. If the educator does not accept the admonishment and requests a hearing, the EPSB staff will recommend to the Board that the matter be referred for hearing.
4. If the educator accepts the admonishment, the admonishment is considered final action.
5. The EPSB staff, a hearing officer, and the Board may consider any past written admonishments when seeking, recommending, or ordering sanctions based on subsequently obtained evidence of similar improper or criminal conduct by the educator.

E. **Admonishment with Training.** The Board may issue a written admonishment with training if the Board determines, based on the evidence, a violation has occurred, the violation is not of a serious nature, and that the additional professional development is warranted to prevent future violations. The Board shall require the educator to undergo specific training within a specific time period. Upon completion of training, the educator will be required to present written proof of training to the Board. If the educator fails to complete the training within the specified timeframe, the Board may consider taking additional action. In all other respects, the process for imposition of an Admonishment with Training will be handled in the same manner as the Admonishment alone.

F. **Referral for Attorney Review and Investigation.** Referral for Attorney Review is appropriate when the alleged conduct, should it be substantiated, would warrant sanctions. During this phase, the assigned attorney will review and evaluate the evidence; determine if more evidence is needed; and prepare a recommendation for the Board as to whether the report or complaint should be referred to hearing.

1. After the Board refers a report or complaint for attorney review and investigation, an attorney will be assigned to handle the report or complaint. The assigned attorney will be responsible for all aspects of the action through final disposition.
2. The EPSB shall be responsible for sending a Notification of Referral for Attorney Review and Investigation (Notice of Referral) to the educator.
3. Contents of Notice of Referral.
 - a. The Notice of Referral shall notify the educator that the Board has referred the report or complaint for further review and investigation.
 - b. The Notice of Referral shall notify the educator of the right to provide evidence that the educator's conduct did not constitute a violation of law or ethics.
 - c. The Notice of Referral shall be sent to the educator's address on file with the EPSB.
4. Review and Investigation.
 - a. The assigned attorney will review the evidence contained in the investigative case file and determine what additional evidence is needed to evaluate the case.
 - b. The assigned attorney will take all steps necessary to gather information or evidence necessary to evaluate case.

5. Recommendations for Resolution

- a. Once the assigned attorney is satisfied that all information and evidence reasonably available has been collected, the attorney shall:
 - i.* recommend that the case be referred for hearing;
 - ii.* recommend that an agreed order be approved; or
 - iii.* recommend that the case be dismissed for lack of evidence or insufficiency of evidence.
- b. At any point after a report or complaint has been referred for investigation and review or referred to hearing, the EPSB staff has the authority to enter into discussions with an educator or an educator's attorney to resolve the action by agreed order.
- c. An agreed order is appropriate when there is sufficient evidence that could result in a finding that the alleged misconduct did occur and the educator is willing to accept sanctions without going to the expense of a hearing.
- d. All agreed orders must be approved by a majority of the Board, and signed by the Board chair.

6. The educator has the right to request a hearing at any point after an Agreed Order has been offered and rejected.

G. Referral to Hearing. Referral to Hearing is appropriate when the Board is satisfied, based on the report provided by the EPSB staff that the alleged conduct occurred and that sanctions are warranted. Referral to Hearing is also appropriate when the educator requests a hearing after receiving a written admonishment.

H. Notice of Board Action on Reports or Complaints. Once the Board has taken any of the actions set forth above, the Executive Director shall issue a Notice of Action on Report or Complaint to the educator.

1. The Notice of Board Action on Reports or Complaints (Notice of Board Action) shall be signed by the Executive Director or the Board Chair.
2. The Notice of Board Action will be sent as soon as practicable to the educator's address on file with the EPSB.
3. The Notice of Board Action will also be sent to the reporting party.

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Section 4 Pre-Hearing Phase

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- I. **Referral to Hearing.** When the Board determines that the allegations warrant sanctions, the Board shall refer the matter to hearing. The administrative hearing shall be conducted in conformance with KRS Chapter 13B. KRS 161.120(5)(a).
- II. **Commencement of Disciplinary Action.** The disciplinary process begins once the Board approves and issues a Notice of Hearing and Statement of Charges and Issues prepared by the attorney assigned by the EPSB staff to handle the case.
 - A. **Notice of Hearing and Statement of Charges and Issues.** The Notice of Hearing and Statement of Charges (Statement of Charges) shall inform the educator of the specific reason for the proposed administrative hearing action. Specifically, the Statement of Charges should including at least the following information:
 1. Statutory or regulatory violation(s);
 2. Factual basis on which the disciplinary action is based; and
 3. Penalty sought.
 - B. The Notice of Hearing and Statement of Charges shall be sent to the educator's address on file with the EPSB.
 - C. Pursuant to KRS 161.120(5)(c), the Board may elect to conduct the disciplinary hearing 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).
 1. If the Board elects to proceed by the appointment of a hearing officer and has not sought permission from the Office of the Attorney General to contract with a private hearing officer, the EPSB staff shall request that the Office of the Attorney General appoint a hearing officer to preside over the administrative hearing.
 2. The EPSB staff will forward a copy of the Statement of Charges to the Office of the Attorney General.
 - D. **Appointment of Hearing Officer.** Once appointed, the hearing officer shall preside over the conduct of an administrative hearing and shall regulate the conduct of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. KRS 13B.080.

- E. **Location of Hearing.** Unless otherwise agreed to by the parties, all hearings shall be conducted in the offices of the EPSB, 100 Airport Road, 3rd Floor, Frankfort, KY 40601.
- F. **Right to Private Hearing.** The educator may request in writing a public or private hearing pursuant to KRS 161.120(5)(b). If the educator fails to specifically request a private hearing, the educator is deemed to have waived the right to a private hearing and a public hearing will be conducted.

G. Disclosure of Record.

1. All records relating to a private hearing are generally deemed preliminary and, therefore, exempt from disclosure pursuant to KRS 61.878 and KRS 13B.080 (8) during the hearing phase.
2. Regardless of whether an educator elects to proceed with a private or public hearing, the Recommended Order and hearing transcript is considered preliminary and, therefore, exempt from disclosure pursuant to KRS 61.878 until the Board issues its Final Order. After the Board issues its Final Order, all records, not otherwise exempt by law, will be subject to disclosure pursuant to Kentucky's Open Record Act.

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Section 5 Hearing Phase

APPROVED: April 10, 2017

- I.** The hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. KRS 13B.080(1).
- II. Right to Counsel.** Any party to an administrative hearing may participate in person or be represented by counsel. KRS 13B.080(5).
- III. Record.** The original of all filings shall be mailed to the offices of the EPSB, and copies of any filed item shall be served on all parties and the hearing officer by mail, or any other means permitted by law. The EPSB shall stamp the time and date upon the document when the document is received. KRS 13B.080(2).

IV. Pre-Hearing Process.

- A. Pre-Hearing Conference.** The hearing officer shall schedule a pre-hearing conference upon reasonable notice to all parties. KRS 13B.070.
 1. During the pre-hearing conference, the hearing officer will explore jurisdictional matters, mediation and settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.
 2. Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.
- B. Pre-Hearing Matters and Discovery.** KRS 13B.080(2) – (3).
 1. The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed

findings of fact and conclusions of law, and proposed recommended or final orders.

2. The hearing officer may issue subpoenas and discovery orders when requested by a party or on his or her own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as contempt of the court.

V. Default. If a party properly served under KRS 13B.050 fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate. A Default Order shall be considered a Recommended Order and shall be processed as provided in KRS 13B.110. KRS 13B.080(6).

VI. Hearing.

A. Burden of Proof. KRS 13B.090(7).

1. The EPSB's proposed action on a certification currently held.
 - a. The EPSB has the burden of proof on any issue, has the burden of going forward, and the ultimate burden of persuasion as to that issue.
 - b. The EPSB must demonstrate by the preponderance of evidence in the record that the penalty sought is appropriate.
 - c. The educator has the burden of asserting an affirmative defense and has the burden to establish that defense.
2. Applicant's appeal on the EPSB's denial of an application of certification.
 - a. The applicant has the burden of proof and the ultimate burden of persuasion as to that issue.
 - b. The applicant must demonstrate by the preponderance of evidence in the record entitlement to the benefit sought.
 - c. The EPSB has the burden of asserting an affirmative defense and has the burden to establish that defense.

B. Recommended Order. As appropriate, the presiding hearing officer shall issue a Recommended Order in conformance with the requirements of KRS Chapter 13B.

1. Timeframe.

- a. The hearing officer shall complete and submit that Recommended Order to the EPSB no later than 60 days after receiving a copy of the official record of the proceeding. KRS 13B.110(1).
 - b. If an extension of time is needed, the hearing officer may submit a request to the EPSB in accordance with KRS 13B.110.
2. Format. In addition to the requirements of KRS Chapter 13B, the Hearing officer's recommendation shall be consistent with the EPSB's policy and procedures.
 - a. The hearing officer's Recommended Order shall include only those sanctions that are permitted pursuant to KRS 161.120 (1) and shall not exceed the time limits set forth in KRS 161.120 (10) – (11).
 - b. The hearing officer shall consider the factors set forth in Procedure Section 3, IIA when recommending sanctions.

VII. Filing of Exceptions. A party may file any exceptions to the Recommended Order within 15 days of the date the Recommended Order is mailed in accordance with KRS 13B.110(4), if applicable. This time limit may not be extended and no responses to exceptions shall be considered by the Board.

A. Service

1. Exceptions shall be served upon the other party by mail or any other means permitted by law.
2. Original shall be mailed to the offices of the EPSB.

B. Waiver. Any disagreement with a factual finding or conclusion of law in the Recommended Order not contained in an exception to the Recommended Order shall be waived.

C. Form of Exceptions. Each exception or reply to a finding of fact or conclusion of law should be concisely stated and should summarize the evidence in support of each exception.

1. Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.
2. In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.

3. Arguments shall be logical and coherent and citations to authorities shall be complete.

D. **Basis for Exceptions.** Exceptions to the Recommended Order may include the following:

1. the hearing officer has made an incorrect conclusion of law;
2. the hearing officer has failed to make an essential finding of fact;
3. the hearing officer applied the incorrect burden or standard of proof;
4. the findings of fact do not support the conclusions of law;
5. the hearing officer has made a finding of fact that is not supported by the preponderance of the evidence; or
6. the hearing officer recommended a sanction not permitted by law.

VIII. Disclosure.

- A. All records relating to a private hearing are generally deemed preliminary and, therefore, exempt from disclosure pursuant to KRS 61.878 and KRS 13B.080 (8) during the hearing phase.
- B. Regardless of whether an educator elects to proceed with a private or public hearing, the Recommended Order and hearing transcript are considered preliminary and, therefore, exempt from disclosure pursuant to KRS 61.878 until the EPSB issues its Final Order.

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**Section 6
Post-Hearing Phase**

APPROVED: April 10, 2017

- I. Review of Recommended Order.** In making the Final Order, the Board shall consider the record including the Recommended Order and any exceptions to the Recommended Order. KRS 13B.120(1).
- II. Final Decisions and Orders.** After the Board chair certifies that a quorum is present at an EPSB board meeting, a majority vote of the voting members present shall be required to make a final decision on the Recommended Order or request for issuance of a Default Judgment.
- A. The Board may adopt an order, or it may reject or modify, in whole or in part, the Recommended Order submitted by the presiding hearing officer. KRS 13B.120(2).
 - B. The Board may remand the matter back to the hearing officer, in whole or in part, for further proceedings as appropriate. KRS 13B.120(2).
 - C. If the Final Order differs from the Recommended Order, it shall include a separate statement of the findings of fact and conclusions of law. KRS 13B.120(3).
- III. Timeframe.** When using the services of a hearing officer, the Board shall render a Final Order within 90 days after the hearing officer submits a Recommended Order to the Board unless the matter is remanded back to the hearing officer for further proceedings. KRS 13B.120(4).
- IV. Signature Authority.** The Board may delegate to the chair the authority to sign on behalf of a majority of the Board members a decision made or order issued under this section.
- V. Disclosure of Case File After Final Decision Issued.** Regardless of whether an educator elected to proceed with a public or private hearing, the case file including, but not limited to, the Final Order, the Recommended Order, and the hearing transcript, is subject to disclosure upon the Board's issuance of its Final Order unless specifically closed by the hearing officer pursuant to a provision of law.
- VI. Redaction.** Prior to the public disclosure of the case file in accordance with KRS 61.805, et seq., the EPSB staff shall ensure that any information otherwise prohibited from disclosure by law or regulation is redacted.

VII. Administrative Finality.

- A. In accordance with KRS Chapter 13B, Final Orders issued by the Board shall be subject to judicial review by the Franklin Circuit Court. KRS 161.120 (12).
- B. A petition for judicial review shall not automatically stay a Final Order pending the outcome of the review unless a stay is ordered by the Franklin Circuit Court. KRS 13B.140(4).

VIII. Motions to Reconsider, Modify, or Reverse. Under exceptional circumstances, the Board may reconsider, modify, or reverse its decision on any disciplinary matter upon a motion by one of the parties or on its own volition. KRS 161.120(9).

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Section 7

Procedure for the Suspension, Surrender, or Revocation of a Certificate

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- I. When the Board issues an order of suspension, surrender, or revocation, the EPSB staff shall mail a copy of the order to the educator's address on file with the Education Professional Standards Board.
- II. A record of the Board action suspending or revoking a certificate shall become part of the educator's case file maintained by the EPSB staff.
- III. Immediately following the issuance of the order, the EPSB staff shall notify, as applicable, the reporting district, the employing school district, and the reporting party of the action taken.
- IV. EPSB staff will also ensure that the suspension, surrender, or revocation is noted on the EPSB website. The period of suspension shall only be noted on the website while the certificate is suspended.
- V. EPSB staff will also ensure that the information is provided to the National Association of State Directors of Teacher Education and Certification (NASDTEC) for inclusion in The NASDTEC Clearinghouse. The Clearinghouse is a searchable database administered by NASDTEC relating to educator certification and discipline.

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Section 8

Procedure for the Reinstatement of a Suspended Certificate

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- I. Reinstatement of a suspended certificate for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6).
 - A. A certificate that has been suspended by the Board shall not be reinstated until the educator has met all conditions and requirements ordered by the 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 Board, the educator shall apply for the renewal of the certificate and shall meet all educational requirements for renewal of the certificate.
 - C. The burden to reinstate a certificate that has been suspended is on the educator.
 - D. Conditions.
 1. When the terms of the suspension did not include conditions:
 - a. Upon expiration of the period of suspension, the EPSB staff will reinstate the certificate and remove the reference to the suspension from the EPSB website.
 - b. The EPSB staff will notify the educator in writing to the home address on file with the EPSB that the certificate has been reinstated.
 - c. The EPSB will notify the school district that employs the educator.
 2. When the terms of the suspension included conditions:
 - a. The burden to reinstate the educator's certificate is on the educator.
 - b. The EPSB staff will review the file to determine if the educator has submitted evidence demonstrating that the conditions of suspension were met.
 - c. The EPSB staff will reinstate the certificate after the suspension period is concluded and remove from any reference to the suspension from EPSB's website once the educator has provided evidence that the conditions of suspension have been met.

E. The record of suspension as well as reinstatement of the certification shall become part of the educator's case file, but the suspension will not be noted on any future certificate issued to the educator.

II. Reinstatement of a suspended certificate for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6).

A. In addition to conditions for reinstatement or reissuance set forth above, the educator shall, at the educator's own expense, provide written evidence that the educator has submitted to a drug test administered by a drug testing facility approved by the Board within thirty (30) days of reinstatement or submission of an application for reissuance of the certificate.

B. The educator shall arrange for the drug testing facility to send the results of the drug test directly to the EPSB.

C. An educator subject to the terms of this subsection may petition the EPSB to approve a drug testing facility of the educator's choice.

1. Petition to Approve Drug Testing Facility. 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.

2. The Drug Testing Facility must test, at a minimum, the following controlled substances:

- a. Marijuana;
- b. Cocaine;
- c. Opiates;
- d. Amphetamines;
- e. Phencyclidine;
- f. Morphine;
- g. MDMA (Ecstasy);
- h. Methadone;
- i. Benzodiazepines;
- j. Barbiturates; and
- k. Oxycodone.

D. If the results of the drug test indicate illegal drug use by the educator, the certificate shall not be reinstated or reissued.

Education Professional Standards Board

**PROCEDURES RELATING TO BOARD ACTION ON
AN EDUCATOR'S CERTIFICATION**

Section 9

Procedure for the Reissuance of a Certificate After Surrender or Revocation

APPROVED ___

- I. When surrender or revocation was for a reason other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6), the following conditions apply:
 - A. The former certificate holder must complete the same application that all educators in Kentucky must complete to obtain certification.
 - B. The former certificate holder bears the burden of proving that the certificate holder is fit for practice.
 - C. The former certificate holder must satisfy all current educational requirements for the certificate sought.
 - D. The 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) if reissuing the certificate.
- II. When surrender or revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(6), the former certificate holder must comply not only with the requirements set forth above for reissuance of certification after revocation for all other offenses, the former certificate holder will also have to submit to drug testing as set out in the procedures for suspension resulting from illegal use of controlled substances.
- III. Regardless of the reason for the revocation, the revocation will be noted on the certificate that is issued and will remain on the EPSB website.
- IV. The record of surrender or revocation as well as reissuance shall become part of the educator's case file.