

**151B.055 Employees with continuing status.**

- (1) All certified and equivalent employees who previously held merit status under KRS Chapter 18A shall become continuing status employees in the Office of Career and Technical Education.
- (2) Prior to dismissal, an employee with continuing status shall be notified in writing of the intent to dismiss. The notice shall also state:
  - (a) The specific reasons for dismissal including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the intent to dismiss is based;
    3. The date, time, and place of the action or activity; and
    4. The name of the parties involved; and
  - (b) That the employee has the right to appear personally, or with counsel if counsel has been retained, to reply to the appointing authority or a designee.
- (3) The Office of Career and Technical Education shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the appointing authority or a designee. The form shall be attached to every notice of intent to dismiss, and shall contain written instructions explaining:
  - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
  - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day of receipt of notice, the employee may request to appear, personally or with counsel if counsel is retained, to reply to the appointing authority or a designee.
- (5) The appearance shall be held six (6) working days after receipt of an employee's request to appear before the appointing authority or a designee, excluding the day the employee's request is received, unless the employee and the appointing authority or a designee agree to a later date.
- (6) No later than five (5) working days after the employee appears before the appointing authority or a designee, excluding the day of the appearance, the appointing authority or a designee shall:
  - (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
  - (b) Notify the employee in writing of the decision.
- (7) If the appointing authority or a designee determines that the employee shall be dismissed, the employee shall be notified in writing of:
  - (a) The effective date of dismissal or other penalization;
  - (b) The specific reason for the action, including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the dismissal is based;

3. The date, time, and place of the action or activities; and
    4. The names of the parties involved; and
  - (c) That the employee may appeal the dismissal to the Kentucky Technical Education Personnel Board within thirty (30) days after receipt of this notification, excluding the day the notice is received.
- (8) A certified or equivalent employee with continuing status who is demoted or suspended shall be notified in writing of:
- (a) The demotion or suspension;
  - (b) The effective date of the demotion or suspension;
  - (c) The specific reason for the action including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the demotion or suspension is based;
    3. The date, time, and place of the action or activity; and
    4. The name of the parties involved; and
  - (d) That the employee has the right to appeal to the Kentucky Technical Education Personnel Board within thirty (30) days, excluding the day of receipt of notification.
- (9) Any employee or applicant for employment may appeal to the board on the grounds that the right to inspect or copy records, including preliminary and other supporting documentation, relating to the employee has been denied, abridged, or impeded. The board shall conduct a hearing to determine if the records related to the employee or applicant, and if the right to inspect or copy was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy the records has been denied, abridged, or impeded, the board shall order that the records be made available for inspection and copying.
- (10) Any certified, equivalent, or unclassified employee may appeal an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age to the board. Nothing in this section shall be construed to preclude any employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (11) (a) Appeals to the Kentucky Technical Education Personnel Board shall be in writing on an appeal form prescribed by the Office of Career and Technical Education. Appeal forms shall be available at the employee's place of work. The Office of Career and Technical Education shall be responsible for the distribution of the forms.
- (b) The appeal form shall be attached to any notice, or copy of the notice, of dismissal, demotion, suspension, involuntary transfer, or other penalization, or notice of any other action an employee may appeal under the provisions of this section.

- (c) Upon receipt of the appeal by the board, the appointing authority or a designee shall be notified, and the board shall schedule a hearing that shall be conducted in accordance with KRS Chapter 13B.
- (12)
- (a) Except as provided in this section, an appeal shall be decided by the board only after a hearing. The board shall not deny, reject, or sustain an appeal, or make any other determination relating to an appeal, except after a hearing is conducted pursuant to the provisions of this section and KRS Chapter 13B.
  - (b) The board may deny a hearing to an employee who has failed to file an appeal over which the board has jurisdiction or within the time prescribed by this section and to an unclassified employee who has failed to state the cause for dismissal. The board shall notify the employee of its denial in writing and shall inform the employee of his or her right to appeal the denial under the provisions of KRS 151B.060.
  - (c) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing. Any party to the hearing shall be permitted an adequate opportunity to rebut or comment upon the information.
- (13) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures; or
  - (b) Conduct test representative cases.
- (14) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (15)
- (a) If the board finds that the action complained of was taken by the appointing authority or designee in violation of laws prohibiting favor for, or discrimination against, or bias with respect to political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of the individual's sex, age, or disability, the appointing authority or designee shall immediately reinstate the employee to his or her former position or a position of like status and pay, without loss of pay for the period of penalization, or otherwise make the employee whole;
  - (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his or her former position or a position of like status and pay, without loss of pay for the period of penalization, or otherwise make the employee whole;
  - (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall alter, modify, or rescind the disciplinary action; and

- (d) In all other cases, the board shall rescind the action taken or grant other relief to which the employee is entitled.
- (16) If a final order of the board is appealed, a court shall award reasonable attorney's fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. The award shall not include attorney's fees attributable to the hearing before the board.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 211, sec. 28, effective July 12, 2006. -- Amended 2003 Ky. Acts ch. 29, sec. 10, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 526, sec. 21, effective August 15, 2000. -- Amended 1996 Ky. Acts ch. 318, sec. 42, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 363, sec. 4, effective July 15, 1994; ch. 405, sec. 18, effective July 15, 1994; and ch. 469, sec. 13, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 417, sec. 6, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 470, sec. 9, effective July 1, 1990.