

1 AN ACT relating to hearing officers.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 311.591 is amended to read as follows:

4 (1) The president of the board shall divide the membership of the board, excluding
5 himself or herself, into two (2) panels of seven (7) members, each panel to include
6 at least one (1) consumer member. Each panel shall have the power to act as an
7 inquiry~~[or a hearing]~~ panel. The president shall not be a permanent member of an
8 inquiry~~[either]~~ panel, but shall have the power to render the deciding vote whenever
9 a tie vote is rendered by an inquiry~~[either]~~ panel and shall have the power to serve
10 as a member of an inquiry~~[either]~~ panel when necessary to achieve a quorum by
11 majority.

12 (2) Grievances may be submitted by an individual (including board members),
13 organization, or entity. Each grievance shall be investigated as necessary and the
14 executive director shall assign each grievance to an inquiry panel. All inquiry panels
15 and the executive director shall have the power to issue investigatory subpoenas for
16 the appearance of any person or production of any record, document, or other item
17 within the jurisdiction of the Commonwealth. The panel or executive director may
18 seek enforcement of investigatory subpoenas and search warrants in the courts of
19 the Commonwealth as may be necessary.

20 (3) Upon completion of its inquiry, the inquiry panel shall make a finding that:

21 (a) There is no evidence of a violation of any medical practice act and no further
22 action is necessary;

23 (b) There is insufficient evidence of a violation to warrant the issuance of a
24 complaint, but that there is evidence of a practice or activity that requires
25 modification and the panel may issue a letter of concern under KRS
26 311.550(22). The letter of concern shall be a public document and may be
27 used in future disciplinary actions against the physician;

1 (c) The grievance discloses an instance of misconduct which does not warrant the
2 issuance of a complaint; in these instances, the panel may admonish the
3 physician for his misconduct; or

4 (d) The grievance discloses one (1) or more violations of the provisions of this
5 chapter which warrant the issuance of a complaint; in these instances, the
6 panel shall cause a complaint to be prepared, signed by the presiding officer,
7 which shall contain sufficient information to apprise the named physician of
8 the general nature of the charges.

9 (4) The inquiry panel shall cause a complaint to be served on the charged physician by
10 personal delivery or by certified mail to the physician's last address of which the
11 board has record. The physician shall submit a response within thirty (30) days after
12 service. Failure to submit a timely response or willful avoidance of service may be
13 taken by the board as an admission of the charges.

14 (5) ~~Upon the issuance of the complaint, the executive director shall assign the matter~~
15 ~~for an administrative hearing by a hearing panel. No member who served on the~~
16 ~~inquiry panel may also serve as a member of the hearing panel. The hearing panel or~~
17 ~~the hearing officer on behalf of the panel shall preside over all proceedings pursuant~~
18 ~~to the issuance of a complaint.~~

19 (6) The board may promulgate administrative regulations regarding the informal
20 disposition of any complaint, and an **agreement for** informal disposition may be
21 made at any stage of the proceeding.

22 **(6) Upon the issuance of a complaint by an inquiry panel, the executive director shall**
23 **assign the matter for an administrative hearing and shall request the assignment**
24 **of a hearing officer from the Attorney General's Office.**

25 **(7) The hearing officer shall be randomly selected from a pool of qualified hearing**
26 **officers. Any person who meets the qualifications of subsection (8) of this section**
27 **may apply to become a hearing officer, and the Attorney General or his or her**

1 designee shall determine whether the person applying meets the qualifications.

2 The Attorney General or his or her designee shall maintain a list of the qualified

3 hearing officers and randomly select a hearing officer from the maintained list.

4 The Attorney General or his or her designee shall review and update the

5 maintained list every two (2) years.

6 (8) In addition to the requirements of KRS 13B.030, each person applying to become

7 a hearing officer shall be an attorney, in good standing, with at least five (5)

8 years of experience in the practice of law.

9 (9) If there are no hearing officers in the pool that meet the requirements of

10 subsections (7) and (8) of this section, then the Attorney General or his or her

11 designee shall contract with private attorneys who meet the qualifications of this

12 section.

13 (10) Persons serving as hearing officers shall be paid and reimbursed as provided in

14 KRS 13B.030.

15 (11) The hearing officer shall schedule and conduct the hearing on behalf of the

16 board, in accordance with KRS Chapter 13B, and submit his or her

17 recommendations to the board.

18 (12)(7) Upon completion of an administrative hearing, the hearing officer~~[panel]~~ shall

19 issue findings of fact, pursuant to KRS Chapter 13B, and recommendations to the

20 board. The board shall consider the findings of fact and recommendations and

21 shall issue a final order that:

22 (a) Dismisses the complaint upon a conclusion that the provisions of this chapter
23 have not been violated;

24 (b) Finds a violation of ~~[the provisions of]~~ this chapter, but does not impose
25 discipline because the board~~[panel]~~ does not believe discipline to be necessary
26 under the circumstances; or

27 (c) Imposes discipline upon the licensee; in these instances, the board~~[panel]~~ may

1 revoke, suspend, restrict, deny, or limit a license, or may reprimand a licensee
2 or place a licensee on probation under terms the board~~panel~~ may establish to
3 protect the licensee, his patients, or the general public. The board~~hearing~~
4 ~~panel~~ may impose a fine whenever it finds that a violation of this chapter has
5 occurred. If the board substantiates that sexual contact occurred between the
6 physician and the patient while the patient was under the care of or in a
7 professional relationship with the physician, the physician's license may be
8 revoked or suspended with mandatory treatment of the physician as prescribed
9 by the board. The board may require the physician to pay a specified amount
10 for mental health services for the patient which are needed as a result of the
11 sexual contact. The board's~~hearing panel's~~ order shall be considered the
12 final order of the board regarding the matter.

13 ~~(13)~~~~(8)~~ Regardless of the restrictions on public disclosure of information established
14 in subsection ~~(14)~~~~(9)~~ of this section, the board may order information derived
15 from any investigation or inquiry be released to the physician licensure authority of
16 another state or to any health care or mental health care facility licensed and
17 regulated by the Commonwealth of Kentucky upon a showing that the information
18 is necessary to determine the propriety of a physician practicing in a particular state
19 or facility.

20 ~~(14)~~~~(9)~~ The hearing~~presiding~~ officer at any proceeding held pursuant to a complaint
21 or show cause order shall take whatever measures are necessary to protect the
22 privacy interests of individuals other than the charged physician upon a showing
23 that evidence is to be introduced, the public disclosure of which would constitute a
24 clear invasion of personal privacy. It is the general policy of the Commonwealth
25 that administrative proceedings should be open to the public. Therefore, in applying
26 this subsection, the hearing~~presiding~~ officer shall balance the competing interests
27 and employ the least restrictive measures available to protect the privacy interests

1 involved.

2 **(15) No hearing officer shall be empowered to place any licensee on probation or to**
3 **issue, refuse, suspend, limit or revoke any license.**

4 ➔Section 2. KRS 311.565 is amended to read as follows:

5 (1) The board may:

- 6 (a) Exercise all the administrative functions of the state in the prevention of
7 empiricism and in the regulation of the practice of medicine and osteopathy,
8 which shall include but not be limited to promulgation of reasonable
9 administrative regulations enabling the board to regulate the conduct of its
10 licensees;
- 11 (b) Promulgate reasonable administrative regulations establishing moral, physical,
12 intellectual, educational, scientific, technical, and professional qualifications
13 of applicants for licenses and permits that may be issued by the board;
- 14 (c) Issue, deny, suspend, limit, restrict, and revoke any licenses or permits that
15 may be issued by the board, and to reprimand or to place licensees on
16 probation, in compliance with the provisions of KRS 311.530 to 311.620;
- 17 (d) Appoint an executive director and assistant executive directors and fix their
18 compensation. The executive director shall oversee the work of the board,
19 shall be authorized to discharge the duties of the secretary, as provided by
20 KRS 311.530 to 311.620, and shall carry out the duties of the executive
21 director as set forth elsewhere in this chapter;
- 22 (e) Appoint a general counsel and assistant general counsel and fix their
23 compensation;
- 24 (f) Appoint investigatory personnel and fix their compensation;
- 25 (g) ~~Appoint one (1) or more hearing officers, who need not be members of the~~
26 ~~board, and fix their compensation. Every hearing officer shall be vested with~~
27 ~~the full and complete power and authority of the board to schedule and~~

1 ~~conduct hearings on behalf of and in the name of the board on all matters~~
2 ~~referred for hearing by the board or secretary thereof, including, among other~~
3 ~~things, proceedings for placing licensees on probation and for limitation,~~
4 ~~suspension, and revocation of licenses. All administrative hearings conducted~~
5 ~~by the board, a member of the board, or a hearing officer appointed by the~~
6 ~~board, shall be conducted in accordance with KRS Chapter 13B. No hearing~~
7 ~~officer shall be empowered to place any licensee on probation or to issue,~~
8 ~~refuse, suspend, limit, or revoke any license;~~

9 ~~(h)~~—} Appoint committees of licensees, who need not be board members, to review
10 issues of public or medical interest before the board and to make
11 recommendations to the board on the issues;

12 (h)~~(i)~~ Promulgate administrative regulations to promote the efficient and fair
13 conduct of disciplinary proceedings;

14 (i)~~(j)~~ Promulgate a code of conduct governing the practice of medicine and
15 osteopathy, which shall be based upon generally recognized principles of
16 professional ethical conduct;

17 (j)~~(k)~~ Utilize the services and facilities of professional organizations, and
18 procure and receive the assistance and recommendations of professional
19 organizations in administering KRS 311.530 to 311.620;

20 (k)~~(l)~~ Make its personnel and facilities available to other governmental entities
21 under mutually agreeable terms and conditions;

22 (l)~~(m)~~ Issue regular licenses without further testing by endorsement from
23 another state having qualifications and standards at least as high as those of
24 this state or by endorsement from the National Board of Medical Examiners,
25 the National Board of Examiners for Osteopathic Physicians and Surgeons,
26 the National Joint Committee of Preregistration Physician Training Programs,
27 or any approved successors thereof;

1 ~~(m)~~~~(n)~~ Issue and renew regular licenses to practice medicine or osteopathy in
2 accordance with KRS 311.530 to 311.620 and any reasonable regulations of
3 the board;

4 ~~(n)~~~~(o)~~ Issue and renew, or refuse to issue or renew, or cancel and terminate
5 limited licenses pursuant to administrative regulations promulgated by the
6 board; provided however, no person who held a limited license for
7 institutional practice or general practice as of September 1, 1972, shall be
8 denied the renewal of that limited license for nondisciplinary reasons;

9 ~~(o)~~~~(p)~~ Appoint examiners, who need not be members of the board, and employ
10 or contract with the Federation of State Medical Boards of the United States,
11 Inc., or the National Board of Medical Examiners or other organizations,
12 agencies, or individuals to prepare examination questions and grade
13 examination papers;

14 ~~(p)~~~~(q)~~ Determine the schools, colleges, universities, institutions, and training
15 acceptable in connection with licensure under KRS 311.530 to 311.620;

16 ~~(q)~~~~(r)~~ Prescribe the time, place, method, manner, scope, and content of
17 examinations;

18 ~~(r)~~~~(s)~~ Prescribe all forms which it considers appropriate, and require the
19 submission of photographs, fingerprints, and personal history data;

20 ~~(s)~~~~(t)~~ Require a criminal background investigation of all persons applying for
21 licensure at the time of initial application, and at other times at the request of
22 the board for good cause shown, by means of a fingerprint check by the
23 Department of Kentucky State Police and Federal Bureau of Investigation;

24 ~~(t)~~~~(u)~~ Prescribe and collect reasonable fees and charges for examinations,
25 directories, and the issuance and renewal of licenses and permits; and

26 ~~(u)~~~~(v)~~ Impose fines of not greater than five thousand dollars (\$5,000) per
27 violation and require the licensee to reimburse the board for the costs of the

1 administrative proceedings including consultant fees, upon a finding pursuant
2 to disciplinary proceedings that the licensee has violated any provision of
3 KRS 311.595 to 311.597 or duly promulgated disciplinary regulation of the
4 board.

5 (2) The board shall develop specific guidelines to follow upon receipt of an allegation
6 of sexual misconduct by a physician licensed by the board. The guidelines shall
7 include investigation, inquiry, and hearing procedures which ensure that the process
8 does not revictimize the alleged victim or cause harm if a physician is falsely
9 accused.

10 (3) The board, the hearing officer, and investigators hired by the board shall receive
11 training on the dynamics of sexual misconduct of professionals, including the nature
12 of this abuse of authority, characteristics of the offender, the impact on the victim,
13 the possibility and the impact of false accusations, investigative procedure in sex
14 offense cases, and effective intervention with victims and offenders.

15 ➔Section 3. KRS 311.550 is amended to read as follows:

16 As used in KRS 311.530 to 311.620 and 311.990(4) to (6):

17 (1) "Board" means the State Board of Medical Licensure;

18 (2) "President" means the president of the State Board of Medical Licensure;

19 (3) "Secretary" means the secretary of the State Board of Medical Licensure;

20 (4) "Executive director" means the executive director of the State Board of Medical
21 Licensure or any assistant executive directors appointed by the board;

22 (5) "General counsel" means the general counsel of the State Board of Medical
23 Licensure or any assistant general counsel appointed by the board;

24 (6) "Regular license" means a license to practice medicine or osteopathy at any place in
25 this state;

26 (7) "Limited license" means a license to practice medicine or osteopathy in a specific
27 institution or locale to the extent indicated in the license;

- 1 (8) "Temporary permit" means a permit issued to a person who has applied for a regular
2 license, and who appears from verifiable information in the application to the
3 executive director to be qualified and eligible therefor;
- 4 (9) "Emergency permit" means a permit issued to a physician currently licensed in
5 another state, authorizing the physician to practice in this state for the duration of a
6 specific medical emergency, not to exceed thirty (30) days;
- 7 (10) Except as provided in subsection (11) of this section, the "practice of medicine or
8 osteopathy" means the diagnosis, treatment, or correction of any and all human
9 conditions, ailments, diseases, injuries, or infirmities by any and all means,
10 methods, devices, or instrumentalities;
- 11 (11) The "practice of medicine or osteopathy" does not include the practice of Christian
12 Science, the domestic administration of family remedies, the rendering of first aid
13 or medical assistance in an emergency in the absence of a person licensed to
14 practice medicine or osteopathy under the provisions of this chapter, the use of
15 automatic external defibrillators in accordance with the provisions of KRS 311.665
16 to 311.669, the practice of podiatry as defined in KRS 311.380, the practice of
17 dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS
18 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015,
19 the practice as a nurse as defined in KRS 314.011, the practice of physical therapy
20 as defined in KRS 327.010, the practice of genetic counseling as defined in KRS
21 311.690, the performance of duties for which they have been trained by paramedics
22 licensed under KRS Chapter 311A, emergency medical responders, advanced
23 emergency medical technicians, or emergency medical technicians certified under
24 Chapter 311A, the practice of pharmacy by persons licensed and registered under
25 KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines,
26 trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or
27 mechanisms that are intended, advertised, or represented as being for the treatment,

- 1 correction, cure, or relief of any human ailment, disease, injury, infirmity, or
2 condition, in regular mercantile establishments, or the practice of midwifery, or the
3 provision of certified professional midwifery services by a licensed certified
4 professional midwife as defined in KRS 314.400;
- 5 (12) "Physician" means a doctor of medicine or a doctor of osteopathy;
- 6 (13) "Grievance" means any allegation in whatever form alleging misconduct by a
7 physician;
- 8 (14) "Charge" means a specific allegation alleging a violation of a specified provision of
9 this chapter;
- 10 (15) "Complaint" means a formal administrative pleading that sets forth charges against
11 a physician and commences a formal disciplinary proceeding;
- 12 (16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those
13 crimes which have dishonesty as a fundamental and necessary element, including
14 but not limited to crimes involving theft, embezzlement, false swearing, perjury,
15 fraud, or misrepresentation;
- 16 (17) "Telehealth" means the use of interactive audio, video, or other electronic media to
17 deliver health care. It includes the use of electronic media for diagnosis,
18 consultation, treatment, transfer of medical data, and medical education;
- 19 (18) "Order" means a direction of the board or its panels made or entered in writing that
20 determines some point or directs some step in the proceeding and is not included in
21 the final order;
- 22 (19) "Agreed order" means a written document that includes but is not limited to
23 stipulations of fact or stipulated conclusions of law that finally resolves a grievance,
24 a complaint, or a show cause order issued informally without expectation of further
25 formal proceedings in accordance with KRS 311.591~~[(6)]~~;
- 26 (20) "Final order" means an order issued by the board~~[hearing panel]~~ that imposes one
27 (1) or more disciplinary sanctions authorized by this chapter;

- 1 (21) "Letter of agreement" means a written document that informally resolves a
2 grievance, a complaint, or a show cause order and is confidential in accordance with
3 KRS 311.619;
- 4 (22) "Letter of concern" means an advisory letter to notify a physician that, although
5 there is insufficient evidence to support disciplinary action, the board believes the
6 physician should modify or eliminate certain practices and that the continuation of
7 those practices may result in action against the physician's license;
- 8 (23) "Motion to revoke probation" means a pleading filed by the board alleging that the
9 licensee has violated a term or condition of probation and that fixes a date and time
10 for a revocation hearing;
- 11 (24) "Revocation hearing" means a hearing conducted in accordance with KRS Chapter
12 13B to determine whether the licensee has violated a term or condition of probation;
- 13 (25) "Chronic or persistent alcoholic" means an individual who is suffering from a
14 medically diagnosable disease characterized by chronic, habitual, or periodic
15 consumption of alcoholic beverages resulting in the interference with the
16 individual's social or economic functions in the community or the loss of powers of
17 self-control regarding the use of alcoholic beverages;
- 18 (26) "Addicted to a controlled substance" means an individual who is suffering from a
19 medically diagnosable disease characterized by chronic, habitual, or periodic use of
20 any narcotic drug or controlled substance resulting in the interference with the
21 individual's social or economic functions in the community or the loss of powers of
22 self-control regarding the use of any narcotic drug or controlled substance;
- 23 (27) "Provisional permit" means a temporary permit issued to a licensee engaged in the
24 active practice of medicine within this Commonwealth who has admitted to
25 violating any provision of KRS 311.595 that permits the licensee to continue the
26 practice of medicine until the board issues a final order on the registration or
27 reregistration of the licensee;

1 (28) "Fellowship training license" means a license to practice medicine or osteopathy in
2 a fellowship training program as specified by the license; and

3 (29) "Special faculty license" means a license to practice medicine that is limited to the
4 extent that this practice is incidental to a necessary part of the practitioner's
5 academic appointment at an accredited medical school program or osteopathic
6 school program and any affiliated institution for which the medical school or
7 osteopathic school has assumed direct responsibility.

8 ➔Section 4. KRS 311.572 is amended to read as follows:

9 (1) The board may issue an order directing an applicant for a license or the holder of a
10 license to show cause why the applicant should be granted a license or the licensee
11 should not be disciplined, respectively, when:

12 (a) An applicant admits or is otherwise found to have committed an act which
13 constitutes a violation of the provisions of this chapter; or

14 (b) A licensee admits or is otherwise found to have committed an act in violation
15 of the provisions of this chapter in any document relating to the registration or
16 reregistration of a license.

17 (2) The order shall be signed by an officer of the board and shall state those violations
18 which the board believes to have been committed. The matter shall be assigned to a
19 hearing officer~~[panel]~~ and shall proceed in accordance with KRS 311.591. The
20 burden of proof shall lie with the charged physician.

21 (3) The board may issue a provisional permit to practice medicine as provided in KRS
22 311.550(27) and the board shall not approve any application for licensure or
23 application for reregistration of an inactive license or provisional permit until a final
24 order on the matter has been issued.

25 ➔Section 5. KRS 311.594 is amended to read as follows:

26 (1) When the board~~[a hearing panel]~~ imposes discipline in a final order pursuant to
27 KRS 13B.120 and Section 1 of this Act~~[311.591(7)]~~, the board~~[panel]~~ may fix the

1 appropriate sanction for the violation, but withhold imposition of the sanction under
2 an order of probation for a period of not more than five (5) years, or under an order
3 of indefinite restriction or limitation, with the requirement that the physician fully
4 comply with the terms and conditions specified by the board~~[panel]~~ as necessary for
5 the protection of the public and rehabilitation of the physician's practice.

6 (2) If the board receives information that a licensee has violated a term or condition of
7 an order of probation, or an order of indefinite restriction or limitation, issued under
8 subsection (1) of this section during the effective period of that order, the board
9 shall investigate the allegations as necessary. The board shall have all of the powers
10 outlined in KRS 311.591(2) and 311.605(2) to conduct its investigation.

11 (3) Upon completion of its inquiry relating to a violation of probation, the
12 board~~[hearing panel]~~ shall make a finding that:

13 (a) The investigation does not disclose a violation of the order of probation or the
14 order of indefinite restriction or limitation;

15 (b) The investigation discloses a violation of a term or condition of the order of
16 probation or the order of indefinite restriction or limitation but that revocation
17 of probation or the order of indefinite restriction or limitation and imposition
18 of the previously fixed sanction may not be necessary for protection of the
19 public, and the board~~[panel]~~ may admonish or issue a letter of concern to the
20 physician stating its findings and cautioning that another violation shall result
21 in revocation of probation or the order of indefinite restriction or limitation
22 and imposition of the previously fixed sanction; or

23 (c) The investigation discloses one (1) or more violations of the terms and
24 conditions of the order of probation or the order of indefinite restriction or
25 limitation, and the board~~[panel]~~ shall cause a motion to revoke probation or a
26 motion to revoke the order of indefinite restriction or limitation, to be
27 prepared and signed by the executive director~~[presiding officer]~~. The motion

1 shall identify the term or condition violated and include a general statement of
2 the nature of the violation and shall set a date and time for a revocation
3 hearing.

4 (4) The ~~board~~~~[hearing panel]~~ shall cause the motion to revoke probation or the motion
5 to revoke the indefinite restriction or limitation, to be served on the physician by
6 personal delivery or by certified mail to the last address on record with the board for
7 the physician or the physician's representative.

8 (5) The hearing on the motion to revoke probation or the motion to revoke the order of
9 indefinite restriction or limitation shall be conducted in accordance with KRS
10 Chapter 13B **and Section 1 of this Act**, but the single issue to be decided shall be
11 whether the physician has violated a term or condition of the order of probation or
12 the order of indefinite restriction or limitation. Any recommended order issued
13 under KRS 13B.110 shall be limited to recommended findings of fact and
14 recommended conclusions of law.

15 (6) Upon completion of the hearing on the motion to revoke probation or the motion to
16 revoke the indefinite restriction or limitation, the ~~board~~~~[hearing panel]~~ shall issue
17 an order that:

18 (a) Denies the motion upon a conclusion that the order of probation has not been
19 violated;

20 (b) Finds a violation of the order of probation or the order of indefinite restriction
21 or limitation but does not impose the previously fixed sanction and the panel
22 may:

23 1. Modify the terms and conditions of probation or the indefinite restriction
24 or limitation to address issues presented during the hearing; or

25 2. Admonish the physician or issue a letter of concern to the physician; or

26 (c) Imposes the previously fixed sanction.

27 ➔Section 6. KRS 161.790 is amended to read as follows:

- 1 (1) The contract of a teacher shall remain in force during good behavior and efficient
2 and competent service by the teacher and shall not be terminated except for any of
3 the following causes:
- 4 (a) Insubordination, including but not limited to violation of the school laws of
5 the state or administrative regulations adopted by the Kentucky Board of
6 Education, the Education Professional Standards Board, or lawful rules and
7 regulations established by the local board of education for the operation of
8 schools, or refusal to recognize or obey the authority of the superintendent,
9 principal, or any other supervisory personnel of the board in the performance
10 of their duties;
- 11 (b) Immoral character or conduct unbecoming a teacher;
- 12 (c) Physical or mental disability; or
- 13 (d) Inefficiency, incompetency, or neglect of duty, when a written statement
14 identifying the problems or difficulties has been furnished the teacher or
15 teachers involved.
- 16 (2) Charges under subsection (1)(a) and (d) of this section shall be supported by a
17 written record of the actions of the teacher upon which the charge is based, provided
18 by the superintendent, principal, or other supervisory personnel of the district,
19 except when the charges are brought as a result of a recommendation made under
20 KRS 158.6455.
- 21 (3) No contract shall be terminated except upon notification of the board by the
22 superintendent. Prior to notification of the board, the superintendent shall furnish
23 the teacher with a written statement specifying in detail the charge against the
24 teacher. The teacher may within ten (10) days after receiving the charge notify the
25 commissioner of education and the superintendent of his or her intention to answer
26 the charge, and upon failure of the teacher to give notice within ten (10) days, the
27 dismissal shall be final.

- 1 (4) (a) Except as provided in KRS 163.032, upon receiving the teacher's notice of his
2 or her intention to answer the charge, the commissioner of education shall
3 appoint a three (3) member tribunal, consisting of one (1) teacher, who may be
4 retired, one (1) administrator, who may be retired, and one (1) attorney to
5 serve as hearing officer and chairperson of the tribunal, none of whom reside
6 in the district, to conduct an administrative hearing in accordance with KRS
7 Chapter 13B within the district. Priority for selection as a teacher or
8 administrator tribunal member shall be from a pool of potential tribunal
9 members who have been designated and trained to serve as tribunal members
10 on a regular and ongoing basis, pursuant to administrative regulations
11 promulgated by the Kentucky Board of Education. Funds appropriated to the
12 Department of Education for professional development may be used to
13 provide tribunal member training. The commissioner of education shall set the
14 date and time for the hearing. The hearing shall begin no later than forty-five
15 (45) days after the teacher files the notice of intent to answer the charge unless
16 an extension is granted by the hearing officer or otherwise agreed to by the
17 parties.
- 18 (b) The hearing officer shall be randomly appointed from a pool of hearing
19 officers who have received in-depth training in the law related to employment
20 of teachers and in the conduct of due process hearings pursuant to KRS
21 Chapter 13B, and who hold other qualifications as determined by the
22 Kentucky Board of Education.
- 23 (c) The hearing officer training shall be designed and conducted by the Kentucky
24 Department of Education.
- 25 (d) The Kentucky Board of Education shall adopt administrative regulations to
26 implement the due process provisions required by this section. Persons
27 serving as hearing officers shall be paid or reimbursed as provided in KRS

1 13B.030.

- 2 (5) The hearing officer shall schedule a mandatory prehearing conference with the
3 parties, which may be held in person or electronically through the use of
4 technology. Prehearing motions may be disposed of at the conference. The hearing
5 officer shall have the authority to mediate settlement and to enter an agreed order if
6 the matter is resolved by the parties. A hearing officer shall have final authority to
7 rule on dispositive prehearing motions.
- 8 (6) If the matter is not settled or dismissed as a result of the prehearing conference, a
9 tribunal hearing shall be conducted. The hearing may be public or private at the
10 discretion of the teacher. At the hearing, the hearing officer appointed by the
11 commissioner of education shall preside with authority to rule on procedural
12 matters, but the tribunal as a whole shall be the ultimate trier of fact. The local
13 board shall pay each teacher and administrator member of the tribunal a per diem of
14 one hundred dollars (\$100) and travel expenses.
- 15 (7) Upon hearing both sides of the case, the tribunal may by a majority vote render its
16 decision or may defer its action for not more than five (5) days. The decision,
17 written in a recommended order, shall be limited to upholding or overturning the
18 decision of the superintendent. The hearing officer shall then within fifteen (15)
19 days submit to the parties the written recommended order in a form complying with
20 the requirements of KRS 13B.110(1). Each party may file written exceptions no
21 later than fifteen (15) days from receipt of the recommended order. Upon
22 consideration of the exceptions filed by the parties, the hearing officer may order a
23 settlement conference between the parties. Within ten (10) days after either the
24 consideration of the exceptions or a settlement conference, whichever occurs later,
25 the hearing officer shall enter a final order. If there is no settlement reached, the
26 final order shall affirm the recommended order. If a settlement is reached, the final
27 order shall approve the terms of a written settlement as an agreed order. Provisions

1 of KRS Chapter 13B notwithstanding, the hearing officer's decision shall be a final
2 order.

3 (8) The superintendent may suspend the teacher pending final action to terminate the
4 contract, if, in his or her judgment, the character of the charge warrants the action. If
5 the contract termination is overturned by the final order, the suspended teacher shall
6 be paid his or her full salary for any period of suspension.

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

11 (10) As an alternative to termination of a teacher's contract, the superintendent upon
12 notifying the board and providing written notification to the teacher of the charge
13 may impose other sanctions, including suspension without pay, public reprimand, or
14 private reprimand. The procedures set out in subsection (3) of this section shall
15 apply if the teacher is suspended without pay or publicly reprimanded. The teacher
16 may appeal the action of the superintendent if these sanctions are imposed in the
17 same manner as established in subsections (4) to (9) of this section. Upon
18 completion of a suspension period, the teacher may be reinstated.