

Personnel Decisions

in

Kentucky SBDM Schools



May 2004

Kentucky Department of Education
Division of Leadership Development

<http://www.kde.state.ky.us/KDE/Administrative+Resources/School+Based+Decision+Making/default.htm>

Links for References That Appear in This Document:

School Based Decision Making Statute: KRS 160.345

<http://www.lrc.state.ky.us/krs/160%2D00/345.pdf>

School Council Allocation Regulation: 702 KAR 3:246

<http://www.lrc.state.ky.us/kar/702/003/246.htm>

Attorney General's Opinion re: Personnel Issues: OAG 97-7

<http://www.law.state.ky.us/civil/opinions/oag977.htm>

Attorney General's Opinion re: Personnel Issues: OAG 96-38

<http://www.law.state.ky.us/civil/opinions/oag9638.htm>

Attorney General's Opinion re: Personnel Issues: OAG 93-55

<http://www.law.state.ky.us/civil/opinions/oag9355.htm>

OVERVIEW

Some of the most important decisions that your school council will make or consider are issues about personnel. This document provides technical assistance and references to law, regulation and legal opinions that help clarify personnel issues. Questions can be addressed to:

Council Development Branch
Kentucky Department of Education
15th Floor CPT 500 Mero Street
Frankfort, Kentucky 40601
(502) 564-4201 (Phone)
(502) 564-7574 (Fax)

SBDM Law – KRS 160.345

After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals. KRS 160.345 (2)(f).

From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2) (i) 10. of this section. The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. When a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020. The superintendent shall provide additional applicants upon request when qualified applicants are available. KRS 160.345 (2)(h).

The school council shall adopt a policy to be implemented by the principal in the following additional areas: Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation. KRS 160.345 (2) (i) 10.

Statutory Requirements

The responsibility of a school council in the area of personnel as defined by statute includes:

- determining the number of persons to be employed in each job classification in the school as part of the school's yearly budget
- adopting a policy and procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, review of references, and situations in which members of the council are not available for consultation.
- being consulted by the principal prior to his/her making a recommendation on filling vacancies in all classified and certified positions that occur after the council is formed
- selecting a new principal if a vacancy occurs in that position after the council is formed

Other legal requirements that school councils need to be aware of include the following:

- The council shall not have the authority to recommend transfers or dismissals. KRS160.345 (2) (f).
- The council makes policy determining the assignment of instructional and non-instructional staff time in the school. KRS 160.345 (2) (i).
- OAG 97-7 defines vacancy and requires the posting of every certified position vacancy. A vacancy as defined by KRS 160.380(1)(b), can occur at any time during the year, not just after July 15. As a general rule, when a vacancy occurs in a local school district, the superintendent must notify the Kentucky Department of Education, and post the position opening in the local school board office for thirty days before filling the position, or seek a waiver of the 30-day posting requirement from the Commissioner of Education.
- KRS 161.380 gives seniority rights to tenured teachers in situations of reduction in force.
- KRS 161.750 (2) requires notice of non-renewal of limited contracts by April 30
- KRS 161.760 (1) requires notice of assignment of current staff by not later than 45 days before the first student attendance day of the succeeding school year.
- KRS 161.760 (3) requires notice of reduction in duties and salary ninety (90) days prior to first student attendance day of the succeeding school year.

Implications for Hiring

The Kentucky Department of Education has identified the following implications for personnel actions in all applicable statutes, regulations and attorney general opinions:

- When a vacancy occurs in a certified or classified position at a school that has implemented school-based decision making, the terms of KRS 160.345 apply so that the principal is to select the person to fill the position in consultation with the school council.
- Certified vacancies in positions at SBDM schools should be posted immediately, regardless of when the vacancy occurs OAG 97-7
- The superintendent must conduct a search to locate minority candidates for vacancies, as required by KRS 160.380.
- The statute does not require posting of vacancies for classified positions. The local board of education may have a policy that addresses the posting of classified vacancies. Classified employees in SBDM schools are subject to the written policies of the local board of education and all other requirements set forth in KRS 161.011. However, at SBDM schools, all classified positions at the school are filled through consultation with the council as per their policy and final selection by the principal. The superintendent submits a list of qualified

applicants for the vacant certified or classified position to the principal. After following the consultation policy and consulting the council, the principal selects the particular certified and classified persons to fill the vacancies in the schools, and those decisions are binding on the superintendent. [KRS 160.345 (2)(h)].

- The school council selects a new principal from all qualified applicants submitted by the superintendent, and the decision is binding on the superintendent. [KRS 160.345 (2) (h)].
- The superintendent should inform the principal at a SBDM school of vacancies immediately so that the principal may act in a timely fashion, especially since staffing decisions by the principal and school have the potential for impacting required timelines for notice to employees of assignments. Likewise, principals should make hiring decisions in a timely fashion.
- KRS 160.380 (2) (c) provides that when a certified vacancy needs to be filled in less than 30 days time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If a waiver is approved, the appointment cannot be made until the chief state school officer has approved the person recommended for the position. The chief state school officer must respond to the district's request for waiver or for approval of an appointment within two working days. It is important to seek waivers only when they are truly necessary.
- When circumstances warrant a waiver of the 30-day posting requirement but a desirable qualified applicant has not been identified, regardless of whether the position is at a SBDM or non-SBDM school, it is recommended that the superintendent proceed to post the vacancy. Later, when a desirable qualified applicant is identified, the superintendent may want to submit to the Department of Education a request for waiver of the 30-day posting requirement and for approval to hire the applicant.
- Superintendents have authority to select persons to fill district-wide positions, such as itinerant teaching positions, even if the position includes assignments at SBDM schools.
- When a vacancy occurs in the position of principal prior to the formation of the school council, it is suggested that the superintendent solicit staff and parent input in the principal selection process. Legally, the superintendent selects the principal in this situation.
- When filling vacancies for itinerant principals, school council selection from a list of candidates submitted by the superintendent still applies, and the superintendent completes the hiring process.
- The school council is responsible for developing a policy for assigning instructional and non-instructional staff time. [KRS 160.345 (2)(i)(2)]. As an example, this policy might cover an extra duty assignment policy.
- School councils may inquire about the details of the search to locate minority teacher candidates conducted by the superintendent. If councils do not receive minority applicants, they may offer to assist in any way possible to encourage the recruitment of minority candidates for teaching and other positions in the school.
- Superintendents may transfer or assign staff members for whom there is a contractual obligation to a SBDM school without allowing the principal selection rights or the school council consultation rights when the only position available is at an SBDM school and one of the following circumstances exists:
 - a. When a reduction in force exists, (for example, because of a decrease in enrollment, closing of a school, or territorial changes affecting the district) and it becomes necessary to find a position for a certified staff member because of teacher seniority rights under the reduction in force statute, KRS 161.800. In the case of a reduction in force because of a decline in enrollment, school councils must accept necessary transfers, but first the identity

- of each vacancy and the certification requirements should be known. In that case, the 30-day posting provision should precede placement in the vacancies based on seniority.
- b. When positions become available subsequent to a reduction in force, and KRS 161.800 applies, the employees whose continuing contracts are suspended in a reduction in force have the right of restoration to continuing service status in the order of seniority of service in the district if qualified for the vacant position.
 - c. When the superintendent must honor an employer-employee bargained contract on transfers.
 - d. When a transfer is required pursuant to a court-ordered district-wide affirmative action plan, whether voluntary or involuntary.
 - e. When an employee is returning from a leave of absence.
 - f. When a court or teacher tribunal has ordered the reinstatement of a former employee.
 - g. When an administrator for whom there is a contractual obligation has been demoted and must be assigned within his or her area(s) of certification.
 - h. When an employee (certified or classified) under contract must be placed to avoid a breach of contract.
 - i. When a principal has been hired and his or her spouse needs to be transferred out of the school to avoid a nepotism violation under KRS 160.380 (2) (g), and the only position available for which the spouse is certified is at an SBDM school.
 - j. Food service is a special case because it can be organized two ways: centralized or school-based. A centralized service is managed by a district food service director who supervises personnel who cook for all schools. A school-based service makes each principal responsible for supervising food staff. If the service is centralized, district officials select food workers, but if the service is school based, the principal selects after consulting the council. *(Note: The centralized option allows the food service director to apply nutritional expertise and allows the principal to focus on instruction, so KDE recommends the centralized approach. However, districts are free to use the school-based approach.)*

Implications for Extra Duty Assignment and Coaches' Positions

When extra duties are merely additional assignments to an existing position in that school, posting of the extra-duty assignment is not required. However, when a full-time position is either created or vacant, if the extra-duty assignments are considered attached to the position, they should be posted as part of the position. Coaches' positions are to be treated in the same manner. OAG 95-10.

Implications for the Continuing Employment of Non-Tenured Staff in SBDM Schools

In situations where a non-tenured staff member has received notification from the superintendent of non-renewal by April 30 per the requirements of KRS 161.750 (2) and the superintendent subsequently rescinds the decision prior to the end of the current employment contract, then no vacancy has occurred and the superintendent may extend the employment of the employee for another year in their current position in the same school. However, if the contract is allowed to expire a vacancy occurs, and potential re-employment of the staff member would follow the procedures outlined in KRS 160.345 (2) (h), which requires the principal to select personnel from a list of candidates submitted by the superintendent after consultation with the school council.

Transfers in Districts with Bargained Contracts

Any requests for transfers must conform to any employee-employer bargained contract which is in effect. KRS 160.345 (2)(h).

STAFFING

Determining the Number of Persons to Be Employed in Each Job Classification

After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals. KRS 160.345 (2)(f).

Statutory Requirements:

- School councils determine the number of staff needed in each job classification within allocated funds each March.
- School councils may not recommend transfers or dismissals.

Implications for Council Authority to Determine Number of Personnel

Funds that are allocated for personnel are based on the local board of education's staffing policy or guidelines. (Most funds are already committed to the salaries and benefits of existing staff. Options arise when there is a vacancy in one of these positions, when the council makes curriculum changes that result in staffing changes, or when the council opts to use other allocated funds for staffing.) Once councils are notified of those funds, each council decides how many teachers, counselors, librarians, secretaries, aides, custodians, and other staff the school will have for the next year. The council may choose any configuration that fits within the funds available for the school. KDE recommends that councils make those decisions based on the school's Comprehensive School Improvement Plan, so that the decision reflects a systematic understanding of the school's needs and goals

702 KAR 3:246, the School Council Allocation Formula

The School Council Allocation Formula regulation requires each local school board to notify school councils by March 1 of the total funds available for personnel at the school. (This amount will not include funds for personnel that provide non-school based district-wide services, extended employment, itinerants, or funds for personnel from categorical programs.)

The personnel allocation to schools cannot be reduced after March 1 unless one of the following conditions occurs:

1. A certified vacancy is filled with an employee that requires less than the 95 percent average salary allocated. If this occurs, the difference reverts to the district general fund for possible reallocation under Section 7.
2. A classified vacancy is filled with an employee that requires less than the 95 percent average salary allocated. If this occurs, the difference reverts to the district general fund for possible reallocation under Section 7.
3. The district tentative budget adopted in May does not hold in reserve at least the required amount set by KRS 160.470, which presently is 2 percent.
4. A reduction occurs in the per pupil amount of state (SEEK) and local revenue.

5. An adjustment is made in personnel funds by September 15 based on enrollment figures or increase in salary schedule.
6. A district is at risk of deficit spending forbidden by law, and cuts in school-based staff are identified as the only reasonable way to prevent that deficit. KRS 160.550

Filling Staff Vacancies for “Categorical Programs”

Although categorical program funds are excluded from the annual March 1 allocation to school councils, the school council’s policies pursuant to KRS 160.345 (2)(i)(1-10) and the council’s responsibility to be consulted in the filling of vacancies pursuant to KRS 160.345 (2)(h) apply to all non-itinerant categorical program staff who are assigned to the school.

Transfers or Dismissals of Staff

The school council is prohibited from making recommendations for transfers or dismissals. “Transfers” in this instance means moving personnel to a job in another school. Movement from one equivalent position to another within the school is considered to be a re-assignment, and the school council can address this type of movement with policy on the assignment of instructional and non-instructional staff time in the school. [KRS160.345 (2)(i) 2.] The Attorney General has advised that school councils may have a policy, including procedures that should be followed by the principal on assignment of staff time, but the authority for assigning individuals to specific positions belongs to the principal. [OAG 93-55]

Examples of Implementation in Kentucky Schools

To determine the school’s staffing plan each year, the school council could create an ad hoc committee or refer the issue to a standing personnel committee. The council could also choose to ask the principal to prepare the staffing plan. In any case, school personnel issues relative to the number of persons to be employed in each job class should be studied and recommendations made to the school council. A sample policy currently used in some Kentucky schools follows:

"The Personnel Committee shall receive a copy of the local board of education allocation by March 5 of each year. The Personnel Committee shall review the Priority Needs of the school from the school’s comprehensive improvement plan, and from the available funds shown on the allocation, the Personnel Committee will prepare a staffing plan to recommend to the school council that will help implement the school improvement plan. This recommendation will be presented to the school council for its approval no later than March 15. If positions are to be abolished or created as a result of the council’s decision in determining staffing, the principal shall notify the superintendent of the school council’s intentions no later than five working days after the school council approves the staffing plan."

Whatever your approach to making this decision about your budget, your council should work within the timelines established by local board of education policy.

CONSULTATION & SELECTION OF PERSONNEL

Consultation Prior to the Principal's Selection of Personnel

From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with the council consultation policy approved as per subsection (2) (i) (10). Requests for transfer shall conform to any employer-employee bargained contract which is in effect...Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. The superintendent shall provide additional applicants upon request when qualified applicants are available. KRS 160.345 (2) (h).

The school council shall adopt a policy to be implemented by the principal in the following additional areas: Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation. KRS 160.345 (2) (i) 10.

Statutory Requirements

- The principal selects personnel from a list of applicants submitted by the superintendent after consulting with the school council.
- Each school council must have a policy on consultation that addresses meetings, timelines, interviews, review of written applications, and review of references, in addition to procedures to address situations in which all council members are not available for consultation.

Definition of Consultation

Webster's New Collegiate Dictionary defines "consult" as: "1. to ask the advice or opinion of." The dictionary also defines consultation as: "2. to deliberate together." The use of the term "consultation" suggests that the General Assembly intended that principals and other school council members work through a process together which would lead to the principal making the best possible selection of personnel. In order to do this, the principal must follow the council policy on consultation.

Statutory Requirement

- ⇒ The principal fills all other school-based vacancies from a list of qualified candidates submitted by the superintendent, after consultation with the school council. Unless the vacancy to be filled is that of principal, the principal has the final decision on who is to fill vacant positions in the school.
- ⇒ If the school district and the teachers in a school have a bargained contract that defines how requests for transfer are handled, the school council and principal must comply with terms of that contract.

Implications:

Before a school council and principal can begin to work together to fill vacancies in their school, the superintendent must submit a list of applicants to the principal. Superintendents may screen applicants for all vacant positions as per OAG 95-10, which states:

“The superintendent may initially use discretion in providing the school with the names of applicants whose qualifications meet the needs of the school. Thus, the superintendent could provide the school with a list of 10 applicants ranked in preferred order, a list of five applicants with no ranking, or a list of 50 applicants.”

“Qualified” in reference to filling vacant positions includes all applicants who:

- are certified for the position or who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048
- have a clear criminal records check

ALL certified and classified school-based vacancies that occur in a SBDM school, including but not limited to the positions of teacher, special education teacher, counselor, assistant principal, media specialist, school secretary, bookkeeper, custodian and instructional aide, require consultation with the council, as per council policy, before the principal makes a final selection.

The principal “shall select personnel to fill vacancies.” This responsibility cannot be delegated by the principal or assumed by the council. After completing consultation, the principal selects the person who will fill the vacancy. School council members and committee members should be prepared to attend special meetings of the school council throughout the “hiring season” of April through August so that consultation in accordance with school council policy and personnel selection by the principal can be accomplished in a timely manner. Schedules should be coordinated so that a quorum (generally defined as a majority, or four members of a six member council) can be legally assembled for consultation on short notice if required by council policy. Those involved in personnel interviews, including school council members, committee members, or other individuals, should be trained in the legal aspects of interview and confidentiality issues.

Filling Vacancies in Itinerant Positions

For the purpose of filling vacancies, itinerant positions serving multiple schools are considered district-wide positions and are filled by the superintendent. These itinerant positions are not included in the school’s allocation received on March 1. Any ‘*part-time*’ positions that are included in the school council’s allocation on March 1 must be filled by the consultation and principal selection process.

PRINCIPAL SELECTION

Selecting a Principal

From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2) (i) 10. of this section. The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. When a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020. The superintendent shall provide additional applicants upon request when qualified applicants are available. KRS 160.345 (2)(h).

Training Required Prior to Carrying Out Principal Selection Process

When a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training.

Statutory Requirements

- School councils must receive training in recruitment and interviewing techniques prior to carrying out the principal selection process.
- School councils must fill a vacancy for principal from a list of applicants recommended by the superintendent or from subsequent lists of qualified applicants
- If a school council is not satisfied with the initial list of applicants for principal, the council may ask for and will receive additional applicants until there are no more qualified applicants available.

The statute does not require that the outgoing principal remove him or herself from the process of selecting the new principal. It is recommended best practice for the outgoing principal to allow the five remaining council members to conduct the selection process without the involvement of the outgoing principal unless the council requests his or her assistance.

Qualified Applicants for Principal

“Qualified” in reference to filling vacant principal positions includes all applicants who:

- are certified for the position or who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements,

out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048

- have a clear criminal records check

Kentucky Supreme Court Opinion on Principal Selection

The Kentucky Supreme Court rendered an opinion on April 22, 2004 impacting the definition of “qualified applicants” for principal positions. The supreme court upheld the ruling of the Appellate court that the superintendent’s recommendation is not a statutory requirement and that the superintendent must submit all applications for the position of principal to the school council if requested, as long as the applicants have met all the qualifications required by statute (e.g. a clear criminal records check and appropriate certification). This information should be used for all principal selection decisions beginning in April 2004.

- An applicant for principal is qualified based on the legal definition rendered by the KY Supreme Court that the applicant possesses appropriate certification and has a clear criminal records check.
- The district still may have personnel procedures that can include screening and ranking of all candidates. (Councils are not personnel offices, and should not be expected to do the initial screening of candidates.)
- Once screening is complete at the district office, the superintendent can provide the council with a list of the most highly qualified candidates for their consideration.
- If the council asks for more, and continues to ask for more, then the superintendent would eventually have to provide all candidates that are qualified.
- If the council asks for a principal candidate by name and the superintendent does not include them in the first list of candidates then the superintendent must include that person’s name on a subsequent list sent to the council with the remaining legally qualified applicants.
- Board policy can no longer contain “objective criteria” in addition to other qualifying criteria.

2004 Supreme Court Conclusions

Young v. Hamilton and Back v. Robinson, 2003 SC-0397-I, rendered April 22, 2004

The Kentucky Supreme Court rendered an Opinion affirming the Kentucky Court of Appeals in the above styled cases on the issue of whether KRS 160.345(2)(h) requires a school based decision making council to select a school principal from among those applicants whom the local superintendent recommends or whether the council has the right to consider all applicants meeting statutory requirements (e.g. appropriately certified.) The Court concluded that the council has the right to consider all applicants meeting statutory requirements, and not just the ones recommended by the superintendent. **This occurs through a two-tiered process in that, after considering the applicants recommended by the superintendent, the council may ask for the remaining legally qualified applicants.**

The rationale for the conclusion is that the Kentucky Education Reform Act stressed the importance of decentralization of school management, “to remove opportunities for nepotism and political influence, and to disperse decision making authority among several interested parties.” This is to reflect the importance of shared responsibility for purposes of accountability

in creating an efficient system. The Court concluded that to hold otherwise would allow a superintendent totally to control selection of the principal in that he or she might recommend one candidate. The Court notes that the council right of selection is tempered by the council's lack of authority to do transfers or dismissals. The balance of authority is intended to create, the Court says, a meaningful dialogue between the council and superintendent. In the Russell Independent Schools decision, the principal is to be removed, and the hiring process to be reopened. This is now the law of the Commonwealth.

Examples of Implementation in Kentucky Schools:

Some SBDM schools in Kentucky use a policy like this one when selecting a principal:

"The school council shall choose a trainer and receive training prior to carrying out the principal selection process.

The school council shall invite all teachers, parents, and school community members to suggest characteristics to consider in a new principal. After receiving a list or subsequent lists of qualified applicants from the superintendent, the school council will schedule a series of special meetings to review the applicants and conduct necessary interviews. All interviews and discussions of candidates will be conducted in closed session.

At the completion of interviews and discussions, the school council will choose a candidate in an open meeting and document this decision in the minutes, and the council chair shall report the council's selection to the superintendent. If the school council is unable to choose a principal and send a decision to the superintendent by August 1, the school council will ask the superintendent to appoint an interim administrator to serve a period of up to one year."