

704 KAR 3:365. Complaint procedures for programs under the Elementary and Secondary Education Act of 1965.

RELATES TO: KRS 156.010, 156.035, 20 U.S.C. 6320, 20 U.S.C. 7844, 20 U.S.C. 7883

STATUTORY AUTHORITY: KRS 156.035, 156.070, 20 U.S.C. 6320, 7844, 7883

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes complaint procedures pursuant to Sections 1117, 8304, and 8503 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. Section 8304 of ESEA requires the Kentucky Department of Education (department) to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of programs under ESEA. Sections 1117 and 8503 of ESEA require the department to resolve complaints related to equitable services to nonpublic school children.

Section 1. Complaints Against a Local Education Agency. (1) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.

(2) Complaints originating at the local level alleging a violation by a local education agency (LEA) of a federal statute or regulation that applies to a program under ESEA shall be decided by the department only after such complaints have been filed and heard at the local level in accordance with local education agency policy.

(3) A complaint not resolved at the local level may be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:

(a) A statement that a requirement that applies to an ESEA program has been violated by the LEA;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific requirement(s) allegedly violated by the LEA;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(5) Upon receipt of a complaint, the department shall carry out an investigation if necessary. During the investigation period:

(a) The complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The LEA shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and

(c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:

1. Direct observation;

2. Interviews; or

3. Examination of records.

(6) Within forty-five (45) days of receiving a complaint, the department shall issue a written decision for each allegation in the complaint. If exceptional circumstances exist with respect to a particular complaint, an extension of the time limit may be granted by the department.

(7) The complainant or LEA shall have a right to request the Commissioner, or his designee, reconsider the written decision in subsection (6). To initiate reconsideration, the complainant or

LEA shall send, by certified mail to the department, a written request within fifteen (15) days of the issuance of the department's decision in subsection (6).

(8) Following the receipt of a request pursuant to subsection (7), the Commissioner, or his designee, shall reconsider the department's decision in subsection (6) and shall issue a final written decision for each allegation in the complaint within thirty (30) days.

(9) Following the final determination on a complaint, the LEA shall take any required corrective action. To ensure compliance, the department may use one (1) or more of the following methods:

- (a) A corrective action plan for the LEA;
- (b) Follow-up visits by department staff to determine whether the LEA is taking the required corrective action;
- (c) Repayment of previously dispersed funds or withholding of future funds; or
- (d) To the extent permissible under ESEA and other applicable laws and regulations, any corrective action necessary to ensure compliance.

Section 2. Complaints Against the State Education Agency. (1) Appeals relating to the department's accountability classification of a school or district shall be governed by 703 KAR 5:240 and not by this administrative regulation.

(2) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.

(3) All other complaints originating at the state level alleging a violation by the state education agency (SEA) of a federal statute or regulation that applies to a program under ESEA shall be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:

- (a) A statement that a requirement that applies to an ESEA program has been violated by the SEA;
- (b) The facts on which the statement is based, a description of the nature of the problem, and the specific requirement allegedly violated by the department;
- (c) A signature and contact information for the complainant; and
- (d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(5) Upon receipt of a complaint, the department shall follow the same procedures outlined in Section 1 of this administrative regulation to the extent practicable.

Section 3. Complaints Related to Equitable Services to Nonpublic School Children. (1) Complaints related to equitable services to nonpublic school children shall be submitted to the nonpublic school ombudsman by mail at the following address: Kentucky Department of Education, c/o Nonpublic School Ombudsman, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(2) Complaints mailed to the nonpublic school ombudsman shall be in the form of a written, signed statement that includes:

- (a) A statement that 20 U.S.C. 7881 has been violated by the SEA, an LEA, an education service agency, a consortium of those agencies, or other entity;
- (b) The facts on which the statement is based and a description of the nature of the problem;
- (c) A signature and contact information for the complainant; and
- (d) A potential resolution of the problem to the extent it is known and available to the com-

plainant at the time of the filing.

(3) Upon receipt of a complaint, the nonpublic school ombudsman shall carry out an investigation if necessary. During the investigation period:

(a) The complainant and the SEA, LEA, education service agency, consortium of those agencies, or other entity shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The SEA, LEA, education service agency, consortium of agencies, or other entity shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and

(c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:

1. Direct observation;
2. Interviews; or
3. Examination of records.

(4) Within forty-five (45) days of receiving a complaint, the nonpublic school ombudsman shall issue a final written decision for each allegation in the complaint..

Section 4. Appeals to the United States Secretary of Education. An involved party may appeal the final written decision of the department under Sections 1, 2, or 3 of this administrative regulation to the United States Secretary of Education (Secretary) to the extent permissible under ESEA and in accordance with written procedures developed and implemented by the Secretary. (16 Ky.R. 288; eff. 10-8-1989; 17 Ky.R. 2055; eff. 2-7-1991; 45 Ky.R. 1418, 2348; eff. 3-8-2019.)