

704 KAR 7:090. Homeless Children and Youth Education Program.

RELATES TO: KRS 156.035, 156.029, 42 U.S.C. 11432

STATUTORY AUTHORITY: KRS 156.160, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with the McKinney-Vento Homeless Assistance Act as amended under the Every Student Succeeds Act of 2015, the Kentucky Department of Education, when applying to the U.S. Department of Education for participation in programs for homeless children and unaccompanied youth under the Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 U.S.C. Section 11432 shall be met. This administrative regulation implements the Kentucky Board of Education's duties pursuant to KRS 156.029 and 156.035 to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. This administrative regulation establishes criteria regarding residency policies, the provision of a free, appropriate public education to homeless children and unaccompanied youth, provides informal procedures for resolution of disputes regarding educational placement of homeless children and unaccompanied youth, provides grants to local educational agencies for the enrollment, retention, and educational success of homeless children and unaccompanied youth, and provides for an annual count of homeless children and unaccompanied youth.

Section 1. Definitions. (1) "Homeless child", "homeless children", and "homeless student" means a child or children who are between the ages of birth and twenty-one (21) years inclusive and who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who are:

- (a) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- (b) Are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
- (c) Are living in emergency or transitional shelters;
- (d) Are abandoned in hospitals;
- (e) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- (f) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (g) Migratory children who qualify as homeless because they are living in circumstances described above.

(2) "Free, appropriate public education" means the educational programs and services that are provided the children of a resident of a state, and that are consistent with state school attendance laws. These educational programs and services, for which the child meets the eligibility criteria, may include:

- (a) Magnet schools;
- (b) Charter schools;
- (c) Compensatory education programs for the disadvantaged;
- (d) Educational programs for the handicapped and students with limited English proficiency;
- (e) Programs in vocational education;
- (f) Programs for the gifted and talented;
- (g) School meals programs;
- (h) Extended school programs;

(i) Preschool programs; and

(j) Programs developed by the family resource and youth services centers.

(3) "School of origin" means the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled. Consistent with McKinney-Vento as reauthorized by ESSA, this shall include preschool and designated receiving schools at the grade level for all feeder schools when a student completes the final grade level served by the school of origin.

(4) "Unaccompanied youth" means a youth that meets the definitions of unaccompanied youth and homeless included in the McKinney-Vento Homeless Assistance Act.

Section 2. Criteria for Program Implementation. Homeless children or unaccompanied youth who reside within the boundaries of a local school district shall be provided a free, appropriate public education. Programs for homeless children and unaccompanied youth shall be provided in a timely fashion and shall be ensured by the following actions:

(1) Each local district shall designate a person in the district to be a homeless child education liaison, shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the homeless child education liaison to perform the required responsibilities. The homeless liaison's responsibilities shall be to:

(a) Obtain all necessary records, including birth certificates and immunization records, of each homeless student and unaccompanied youth identified as living within the boundaries of the school district and immediately place the student in appropriate programs. In cases where records are not readily available, the liaison shall contact the school district(s) of last attendance for verbal confirmation of essential information. The liaison shall assist the homeless student or unaccompanied youth to obtain essential records which are not in existence;

(b) Receive and resolve any requests for resolution of disputes related to the educational placement of homeless students or unaccompanied youth within the district. The liaison shall provide the necessary information to the Department of Education for final resolution whenever such a request is received and is not resolved;

(c) Assist the homeless student or unaccompanied youth to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental, and other appropriate services;

(d) Develop procedures to ensure that homeless student or unaccompanied youth records are readily available upon request by a new receiving school district;

(e) Develop a relationship with known homeless service providers and state agencies in the community to identify and enroll homeless students or unaccompanied youth living there;

(f) Review local data indicating the prevalence of homelessness in the community and assess needs of local homeless children and unaccompanied youth with LEA administrators based on the review of data;

(g) Ensure school personnel providing McKinney-Vento services receive professional development and other support related to addressing the challenges of homelessness and supporting homeless children and unaccompanied youth;

(h) Ensure unaccompanied youth are enrolled and receive support to accrue credits and access higher education; and

(i) Receive annual department-approved training to cover at least the following topic areas:

1. The rights and services provided for homeless children and unaccompanied youth;

2. Identification of homeless children and unaccompanied youth;

3. The state dispute resolution process, data utilization, monitoring, and reporting requirements under this regulation; and

4. Best practices to serve homeless children and unaccompanied youth.

(2) Each local district shall designate a person in the district to be a foster care liaison, shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the foster care liaison to perform required responsibilities. The foster care liaison may also be the homeless education liaison. The foster care liaison's responsibilities shall be to ensure that:

(a) A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest;

(b) If it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and

(c) That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records.

Section 3. Residency. The school district of residence shall be the district in which the homeless student or unaccompanied youth physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere. The school district of residence shall ensure that:

(1) The homeless student or unaccompanied youth is enrolled in the school attendance area in which he or she is physically located or that the homeless student's or unaccompanied youth's education is continued in the school of origin for the remainder of the academic year, or in any case in which the family becomes homeless between academic years, for the following academic year; or enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend, whichever is in the best interest of the homeless student or unaccompanied youth.

(2) In determining the best interests of the child or youth for purposes of making a school assignment under Section 3(1) of this administrative regulation, consideration shall be given to a request made by the parent or unaccompanied youth regarding school selection.

(3) A homeless student or unaccompanied youth shall not be denied enrollment in the school district of residence due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student or unaccompanied youth shall be enrolled and provided educational services until such time that the school district can substantiate that the enrollment is contrary to Section 1(2) of this administrative regulation.

(4) In the absence of a parent, and a court-appointed custodian or guardian, any medical, dental, and other health services may be rendered to a homeless student or unaccompanied youth who is a minor of any age when, in the judgment of the school principal or other professional that the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(5) Homeless children or unaccompanied youth shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and administrative regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.

(6) School district policy shall not delay or deny the immediate provision of educational placement and appropriate services to the homeless student or unaccompanied youth,

including policies related to guardianship issues.

Section 4. Resolution of Disputes. Disputes arising between or among the school district of residency; another school district; and the parent, youth, or person in parental relationship to the homeless student or unaccompanied youth regarding the school district in which the child shall attend school or the educational placement of the homeless student or unaccompanied youth shall be resolved through the following procedures:

(1) The local district homeless child education liaison shall ensure immediate enrollment and the provision of services to the homeless child or unaccompanied youth throughout the dispute resolution process.

(2) All concerns regarding the education of a homeless child or unaccompanied youth shall be referred to the local district liaison. If a complaint arises regarding services or placement of a homeless child or unaccompanied youth the school district's homeless child education liaison shall inform the homeless student or unaccompanied youth of his or her rights under the McKinney-Vento Act and this administrative regulation.

(3) The local district liaison shall make a determination within a reasonable number of days as to the complaint. The liaison will document this and all subsequent communications, determinations, and evidence. A copy of that determination shall be presented to the complainant. If the complaint is not resolved, the complainant will be advised by the local district liaison of the opportunity to present a written request for mediation. The local district liaison shall assist the representative to complete a written request for mediation, including an indication of the specific point at issue.

(4) The mediation shall be scheduled within a reasonable number of days of the written request and shall be convenient to the needs of the homeless student or unaccompanied youth. The district liaison, the district(s) representative(s), and the child's representative shall be present. The local district homeless liaison shall facilitate the mediation.

(5) During the mediation, the school district(s) shall discuss considerations that led to the placement decision and the specific point in issue determined previously. The mediation may also include discussion of the ability of the school district to provide continuity in educational programs, the need of the homeless student or unaccompanied youth for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student or unaccompanied youth and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year. Documentation regarding those proceedings must be provided with any appeal to the state homeless coordinator.

(6) Where an agreement cannot be reached by the parties, either party may request review by the state homeless coordinator. Upon written request, the state coordinator shall make a determination and communicate with the involved parties to discuss available alternatives and seek to resolve the dispute. Any party requesting review by the state coordinator must provide reasoning for the review including specific questions of law or fact.

(7) Where such a request for the assistance of the state coordinator is made, the school district of residence shall provide sufficient information as required, including:

(a) A description of the situation that prompted the complaint;

(b) The name(s) and age(s) of the child or children involved;

(c) The name(s) of the involved school district personnel and the school district or districts involved; and

(d) Copies of any documentation used up to that point including reasoning for district decisions, appropriate evidence to substantiate reasoning, and other evidence the district sees relevant.

(e) All information is subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g).

(8) The state coordinator shall collect appropriate evidence, review such evidence, and provide an initial decision. Parties may request that the state coordinator's decision be reviewed by a three (3) member panel convened by the state coordinator within the Department of Education. The three (3) member panel shall review the state coordinator's decision and either adopt the decision or reject it. If rejected, the panel shall provide an alternative finding with appropriate reasoning. The panel's decision is a final decision and not appealable. A final decision will be rendered within a reasonable number of days after receiving a complaint.

(9) Students must be immediately enrolled in the school in which enrollment is being sought in the case of a dispute, including unaccompanied youth. Enrollment must continue until the final resolution of the dispute, including all available appeals.

(10) Unaccompanied youth have the right to receive such written notice, as well as parents or guardians accompanying their children. Written explanation is required of decisions made by the school, LEA, or SEA and must be in an understandable form.

Section 5. Annual Count. The Department of Education shall annually conduct a count of all homeless children and unaccompanied youth in the state as follows:

(1) Local school districts shall utilize the state student information system for the collection of data regarding homeless children and unaccompanied youth.

(2) Local school districts shall report an unduplicated count by school of homeless children and unaccompanied youth via the state student information system to the Department of Education according to the time lines provided.

(3) The Department of Education shall develop procedures as required to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Education Agency Grants for the Education of Homeless Children and Unaccompanied Youth. The Kentucky Department of Education shall make grants to local education agencies (LEA) when such funds become available through a competitive application process. Grants shall be awarded to LEAs based upon the review and rating of their applications. (1) Not less than fifty (50) percent of amounts provided under a grant to local districts shall be used to provide primary services of tutoring, remedial education services, or other education services to homeless children or unaccompanied youth.

(2) Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to local districts shall be used for related activities including expedited evaluations, professional development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(3) A local district that desires to receive a grant shall submit an application to the Kentucky Department of Education. Each application shall include:

(a) The number of homeless children and unaccompanied youth enrolled in preschool, elementary and secondary school, the needs of such children, and the ability of the district to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs (i.e., enrollment, retention, and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and unaccompanied youth;

(d) A description of policies and procedures that the district shall implement to ensure that activities carried out by the district shall not isolate or stigmatize homeless children and unaccompanied youth;

(e) A description of coordination with other local and state agencies that serve homeless children and unaccompanied youth; and

(f) Other criteria the Kentucky Department of Education deems appropriate. (16 Ky.R. 676; 1183; eff. 12-6-1989; 17 Ky.R. 2061; eff. 2-7-1991; 18 Ky.R. 482; 1011; eff. 10-6-1991; 20 Ky.R. 420; 762; eff. 10-7-1993; 44 Ky.R. 1658; 2015; eff. 4-6-2018.)