

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

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 decided 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 and that the complaint has been filed and decided by the LEA;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific ESEA 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. Written decisions issued by the department shall include:

- (a) A description of applicable statutory and regulatory requirements;
- (b) A description of the procedural history of the complaint;
- (c) Findings of fact supported by citation, including page numbers, to supporting documents;
- (d) Legal analysis and conclusion;
- (e) Corrective actions, if applicable;
- (f) A statement of appeal rights, if applicable;
- (g) A statement regarding the department's determination about whether it will provide services; and
- (h) All documents reviewed by the department in reaching its decision, paginated consecutively.

(7) The complainant or LEA shall have a right to request the Commissioner, or his designee, reconsider the written decision issued pursuant to 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 issued pursuant to subsection (6). The request for reconsideration must include reference to the specific finding(s) of fact, conclusion(s) of law, or corrective action(s) included in the decision issued pursuant to subsection 6 that the party requesting reconsideration disagrees with, as well as the specific reasons the findings are believed to be in error. Written reconsideration decisions issued by the department shall include:

- (a) A description of applicable statutory and regulatory requirements;
- (b) A description of the procedural history of the complaint;
- (c) Findings of fact supported by citation, including page numbers, to supporting documents;
- (d) Legal analysis and conclusion;
- (e) Corrective actions, if applicable;
- (f) A statement of appeal rights, if applicable;
- (g) A statement regarding the department's determination about whether it will provide services; and
- (h) All documents reviewed by the department in reaching its decision, paginated consecutively.

(8) Following the receipt of a request pursuant to subsection (7), the Commissioner, or his designee, shall reconsider the specific findings of fact, conclusions of law, and corrective actions contained in department's decision in subsection (6) and identified in the regulation for reconsideration, 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 department 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 department;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific ESEA 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 department, an LEA, an education service agency, a consortium of those agencies, or other applicable 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 complainant 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 department, 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 department, 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.

Written decisions issued by the department must include:

(a) A description of applicable statutory and regulatory requirements;

(b) A description of the procedural history of the complaint;

- (c) Findings of fact supported by citation, including page numbers, to supporting documents;
- (d) Legal analysis and conclusion;
- (e) Corrective actions, if applicable;
- (f) A statement of appeal rights, if applicable;
- (g) A statement regarding the department's determination about whether it will provide services; and
- (h) All documents reviewed by the department in reaching its decision, paginated consecutively.

Section 4. Appeals to the United States Secretary of Education. An involved party may appeal the final written decision of the department under Section 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. Appeals submitted to the secretary must include the following:

- (1) A clear and concise statement of the parts of the department's decision being appealed, if applicable;
- (2) The legal and factual basis for the appeal;
- (3) A copy of the complaint filed with the department;
- (4) A copy of the department's written resolution to the complaint being appealed, if one is available, including all documents reviewed by the department in reaching its decision, paginated consecutively; and
- (5) Any supporting documentation not included as part of the department's written resolution of the complaint being appealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

ROBBIE FLETCHER, Commissioner

SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: October 10, 2024

FILED WITH LRC: October 14, 2024 at 11:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held December 23, 2024 at 1 p.m. in Room 516, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov