704 KAR 7:090. Homeless Children and Youth Education Program and ensuring educational stability of children in foster care.

RELATES TO: KRS 156.029, 156.035, 156.160, 214.185(3), (4), 20 U.S.C 1232g, 6311(g)(1)(E), 6312(c)(5)(B), 42 U.S.C. 11431 et seq.

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(p)

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), as amended under the Every Student Succeeds Act of 2015 (ESSA), the Kentucky Department of Education (department), when applying to the U.S. Department of Education for participation in programs for homeless children and unaccompanied youth under the McKinney-Vento Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law established in 42 U.S.C. Section 11432 shall be met. This administrative regulation aligns with the Kentucky Board of Education's duties, pursuant to KRS 156.029 and 156.035, to develop administrative regulations governing activities within the department and implement Congressional action appropriating funds to the state in accordance with state and federal law and Kentucky's consolidated State plan under ESSA. Specifically, this administrative regulation establishes criteria regarding residency policies and provides for a free, appropriate public education for homeless children and unaccompanied youth; informal procedures for resolving disputes regarding the educational placement of homeless children and unaccompanied youth; grants to local educational agencies (LEAs) for the enrollment, retention, and educational success of homeless children and unaccompanied youth; and, an annual count of homeless children and unaccompanied youth. Additionally, this administrative regulation requires LEAs to have procedures for awarding credit, including partial credit, for coursework satisfactorily completed by homeless children and unaccompanied youth in another school as well as for conferring high school diplomas to homeless children and unaccompanied youth in accordance with KRS 156.160(1)(p). Consistent with 20 U.S.C 6311(g)(1)(E) and 20 U.S.C. 6312(c)(5)(B), this administrative regulation also promotes the educational stability of children in foster care through the implementation of the foster care liaison within each LEA.

Section 1. Definitions.

(1) "Foster care" shall have the same meaning as defined in KRS 620.020(5).

(2) "Free, appropriate public education" means the educational programs and services provided to the children of a resident of a state 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) "Homeless child," "homeless children," and "homeless student" mean 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. This definition includes children and youth who:

(a) Are 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; or

(g) Are migratory children who qualify as homeless because they are living in circumstances described in this subsection.

(4) "Local educational agency" or "LEA" shall have the same meaning as defined in 20 U.S.C. 7801(30).

(5) "School of origin" means the school that the homeless child or youth or foster child attended when permanently housed or the school in which the homeless child or youth or foster child was last enrolled. 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.

(6) "Student attendance day" shall have the same meaning as defined in KRS 158.070(1)(e).

(7) "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 Homeless Children and Youth Education Program Implementation.

(1) Homeless children and unaccompanied youth who reside within the boundaries of an LEA shall be provided a free, appropriate public education.

(2) Each LEA shall designate a person to be a homeless child education liaison, submit the name of the person acting as liaison to the department, and allocate sufficient time to the homeless child education liaison to perform the required responsibilities.

(3) The homeless child education liaison shall be responsible for:

(a) Obtaining all necessary records, including birth certificates and immunization records, of each homeless student and unaccompanied youth identified as living within the boundaries of the LEA and immediately placing each homeless student and unaccompanied youth in appropriate programs. If educational records are not readily available, the liaison shall personally make direct contact with the LEAs or schools of last attendance for verbal confirmation of essential information, including coursework that has been satisfactorily completed. The liaison shall assist the homeless student or unaccompanied youth to obtain essential records that are not in existence;

(b) Receiving and resolving any requests for resolution of disputes related to the educational placement of homeless students and unaccompanied youth within the LEA. The liaison shall provide the necessary information to the department for final resolution if a request cannot be resolved at the local level;

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

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

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

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

(g) Ensuring 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, including runaway youth;

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

(i) Receiving 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 administrative regulation; and
4. Best practices to serve homeless children and unaccompanied youth.

(4) Consistent with KRS 156.160(1)(p), and to the extent feasible, homeless children and unaccompanied youth shall be awarded credit, including partial credit, for all coursework satisfactorily completed.

(5) To ensure credit, including partial credit, is awarded for all coursework satisfactorily completed by homeless children and unaccompanied youth, an LEA shall adopt written procedures addressing:

(a) The tool or methodology the LEA shall use to calculate credit, including partial credit, to be awarded for all coursework satisfactorily completed by homeless children and unaccompanied youth;

(b) The consolidation of partial credit, where appropriate, to provide opportunities for credit accrual that eliminate academic and nonacademic barriers for homeless children and unaccompanied youth;

(c) How the LEA shall provide students experiencing homelessness access to extracurricular and summer programs, credit transfer and electronic course services, and after-school tutoring and other extended school services available in the district to the fullest extent practicable and at nominal or no costs;

(d) The ways in which the LEA shall lessen the impact of school transfers for homeless children and unaccompanied youth, which shall include:

1. Identifying systems that are in place to ease the transition of students experiencing homelessness, particularly during the first two weeks at a new school;
2. Requiring counselors to provide timely assistance and advice to improve college and career readiness for students experiencing homelessness; and
3. Granting priority placement in classes offered by the LEA that meet state minimum graduation requirements for students who change schools at least once during a school year as a result of homelessness;

(e) How and in what circumstances the LEA shall allow a student experiencing homelessness who was previously enrolled in a course required for high school graduation to complete that course at no cost before the beginning of the next school year as required by KRS 156.160(1)(p)2.; and

(f) The required review of credit accrual and the personal graduation plan for each homeless student and unaccompanied youth that is not on track to receive a high school diploma before the fifth year of high school enrollment.

(6) To ensure credit, including partial credit, is awarded for all coursework satisfactorily completed by homeless children and youth, an LEA may adopt procedures providing for:

(a) The timely placement of a student experiencing homelessness in electives comparable to those in which the student was enrolled in or earned partial credit for the

successful completion of at the previous schools;

(b) Engaging homeless students and unaccompanied youth by offering curricula that connect schoolwork with college and careers;

(c) Flexibility for homeless students and unaccompanied youth to complete credits, particularly those required for high school graduation, which may include flexible scheduling options, open entry and exit, extended year programming, or self-paced learning-based on competency;

(d) Small, personalized learning environments for students experiencing homelessness;

(e) Blended learning opportunities such as computer-based or digital learning options for students experiencing homelessness;

(f) Work-based learning programs, apprenticeships, or alternative education programs that allow homeless students and unaccompanied youth to recover credits or earn income while completing credits; or

(g) The integration of content standards from multiple subject areas into a single course for which students can earn simultaneous credit. Curriculum for integrated courses addresses standards across subject maters and may emphasize interdisciplinary connections from technical or academic areas.

(7) An LEA shall adopt written procedures for awarding a high school diploma to homeless children and unaccompanied youth who transfer after completion of the second year of high school and meet the requirements outlined in KRS 156.160(1)(p).

Section 3. Residency and Enrollment in the Homeless Children and Youth Education Program.

(1) In the best interest of the homeless student or unaccompanied youth, an LEA serving a homeless student or unaccompanied youth shall ensure that:

(a) The homeless student's or unaccompanied youth's education is continued in the school of origin for the duration of homelessness:

1. In any case in which the homeless child or unaccompanied youth becomes homeless between academic years or during an academic year; and

2. For the remainder of the academic year, if the homeless child or unaccompanied youth becomes permanently housed during an academic year; or

(b) The homeless student or unaccompanied youth is enrolled in any school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

(2) In determining the best interests of the homeless child or unaccompanied youth for purposes of making a school assignment under subsection (1) of this section, an LEA serving a homeless student or unaccompanied youth shall:

(a) Presume that it is in the best interest of the homeless child or unaccompanied youth to remain in the school of origin, unless doing so is contrary to a request made by the unaccompanied youth or by the parent or guardian of the homeless child regarding school selection;

(b) Consider student-centered factors, including the impact of mobility on achievement, education, health, and safety, giving priority to a request made by the unaccompanied youth or by the parent or guardian of the homeless child regarding school selection;

(c) If, after conducting the best interest determination based on the presumption in paragraph (a) of this subsection and on the student-centered factors in paragraph (b) of this subsection, the LEA determines that it is not in the homeless child's or unaccompanied youth's best interest to attend the school of origin or the school requested by the unaccompanied youth or by the parent or guardian of the homeless child, provide a written determination explaining the reasons for the determination to the unaccompanied youth or the parent or guardian of the homeless child in a manner

and form that is understandable. The written determination shall also contain information regarding the rights of the unaccompanied youth or the parent or guardian of the homeless child to dispute the determination pursuant to the procedures established in Section 4 of this administrative regulation; and

(d) In the case of an unaccompanied youth, ensure the homeless child education liaison assists in placement or enrollment decisions, gives priority to the views of the unaccompanied youth, and provides notice to the youth of the right to dispute his education placement pursuant to the procedures established in Section 4 of this administrative regulation.

(3) The school selected for purposes of making a school assignment under subsection (1) of this section shall immediately enroll the homeless child or unaccompanied youth, even if the student is unable to produce records normally required for enrollment, or has missed application or enrollment deadlines during any period of homelessness.

(4) A homeless student or unaccompanied youth shall not be denied enrollment due to the absence of a parent or a court-appointed guardian or custodian. The a homeless student or unaccompanied youth shall be enrolled and provided educational services until the LEA can substantiate that the enrollment is contrary to the best interests of the child or youth pursuant to subsection (2) of this section.

(5) 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, 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) and (4).

(6) Homeless children or unaccompanied youth shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. A child shall not be classified as "homeless" to circumvent state law and administrative regulations that:

(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 LEA 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.

(7) LEA policy, including policies related to guardianship issues, shall not delay or deny the immediate provision of educational placement and appropriate services to the homeless student or unaccompanied youth.

Section 4. Resolution of Disputes Arising in the Homeless Children and Youth Education Program.

(1) Disputes arising between and among more than one LEA regarding the enrollment of a homeless student or unaccompanied youth shall be resolved by the state homeless education coordinator in accordance with the procedures established in subsections(4) through (8) of this section.

(2) All other disputes regarding eligibility, school selection, or enrollment of a homeless student or unaccompanied youth shall be received and resolved by the LEA in which enrollment is sought in accordance with the procedures established in subsection (3) of this section.

(3) Within thirty (30) student attendance days after notice of a dispute is received, the LEA in which enrollment is sought by a homeless child or unaccompanied youth shall resolve the dispute using the following procedures:

(a) The homeless child education liaison in the LEA in which enrollment is sought shall ensure immediate enrollment and the provision of services to the homeless child

or unaccompanied youth throughout the dispute resolution process;

(b) All concerns regarding the education of a homeless child or unaccompanied youth shall be referred to the homeless child education liaison in the LEA of enrollment. If a complaint arises regarding services or placement of a homeless child or unaccompanied youth, the homeless child education liaison in the LEA of enrollment shall inform the homeless student or unaccompanied youth of his or her rights under the McKinney-Vento Act and state law, including this administrative regulation;

(c) The homeless child education liaison in the LEA of enrollment shall promptly and thoroughly document all communications, determinations, and evidence. All documentation shall be subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

(d) The homeless child education liaison in the LEA of enrollment shall make a determination on the dispute within a reasonable number of days and provide a copy of that determination to the complainant;

(e) If the dispute is not resolved, the complainant shall be advised by the homeless child education liaison in the LEA of enrollment of the opportunity to present a written request for mediation and, at the request of the complainant, assist the complainant with completing a written request for mediation, including documenting the specific point at issue;

(f) The mediation, if requested by the complainant, shall be facilitated by the homeless child education liaison in the LEA of enrollment and shall be scheduled within a reasonable number of days of the written request and on a day and time reasonably calculated to be convenient to the needs of the homeless student or unaccompanied youth. The LEA representatives and the representatives of the homeless child or unaccompanied youth shall have the opportunity to be present at the mediation;

(g) During the mediation, the LEA representative(s) shall discuss considerations that led to the placement decision and the specific point at issue as determined previously and specified within the written request for mediation. The mediation may also include discussion of the ability of the LEA of enrollment 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 school in which enrollment is sought, the age of the homeless student or unaccompanied youth, the school placement of siblings to the homeless student or unaccompanied youth, and the time remaining until the end of the semester or school year; and

(h) The homeless child education liaison in the LEA of enrollment shall document mediation proceedings and provide the documentation to the state homeless education coordinator with any request made pursuant to subsection (4) of this section.

(4) Any party to the dispute may request review by the state homeless education coordinator. Upon written request, the state homeless education 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 homeless education coordinator shall provide reasoning for the review, including specific questions of law or fact.

(5) If a request for the review of the state homeless education coordinator is made, the LEA of enrollment shall provide sufficient information as required by the department, including:

(a) A description of the situation that prompted the complaint and subsequent request for review by the state homeless education coordinator;

(b) The names and ages of the homeless child or children or unaccompanied youth involved;

(c) The names of the involved LEA personnel and the LEAs involved; and

(d) Copies of any documentation that served as the basis for LEA decisions and other documentation the LEA deems relevant and appropriate for consideration by the state homeless education coordinator.

(6) The state homeless education coordinator shall collect and review appropriate documentation and provide an initial decision to the parties to the complaint within twenty (20) student attendance days after a request for review is received by the department pursuant to subsection (4) of this section.

(7) Any party to the complaint may request that the state homeless education coordinator's decision be reviewed by a three (3) member panel, which shall be convened by the state homeless education coordinator within the department, and the three (3) member panel shall either adopt or reject the state homeless education coordinator's decision within a reasonable number of days after being convened.

(8) If the three (3) member panel rejects the state homeless education coordinator's decision, the panel shall provide an alternative finding, which shall be supported with appropriate reasoning. The panel's decision shall be a final decision and shall not be appealable.

(9) Unaccompanied youth as well as parents or guardians of homeless children shall receive written notice of decisions made by the LEAs, state homeless education coordinator, or the three (3) member panel described in subsection (7) of this section, and the written notice shall be provided in an understandable form.

Section 5. Annual Count for the Homeless Children and Youth Education Program. The department shall annually conduct a count of all homeless children and unaccompanied youth in the state as follows:

(1) LEAs shall utilize the state student information system for the collection of data regarding homeless children and unaccompanied youth;

(2) LEAs shall report an unduplicated count by school of homeless children and unaccompanied youth via the state student information system to the department according to the time lines provided; and

(3) The department shall develop procedures, as needed or 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.

(1) The department shall make grants to LEAs when the funds become available through a competitive application process. Grants shall be awarded to LEAs based upon the review and rating of their applications.

(2) Not less than fifty (50) percent of amounts provided under a grant to LEAs shall be used to provide primary services of tutoring, remedial education services, or other education services to homeless children or unaccompanied youth.

(3) Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to LEAs shall be used for related activities for homeless children or unaccompanied youth 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.

(4) An LEA that desires to receive a grant shall submit an application to the department. Each application shall include:

(a) The number of homeless children and unaccompanied youth enrolled in preschool, elementary and secondary school, the needs of the children, and the ability of the LEA 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 the 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 LEA shall implement to ensure that activities carried out by the LEA 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 department deems appropriate.

Section 7. Ensuring Educational Stability for Children in Foster Care.

(1) Each LEA shall:

(a) Designate a person to be the foster care liaison;

(b) Submit the name of the foster care liaison to the department; and

(c) Allocate sufficient time to the foster care liaison to perform required responsibilities.

(2) The foster care liaison may also be the homeless child education liaison.

(3) The foster care liaison shall ensure that:

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

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

(c) The enrolling school immediately contacts the child's school of origin to obtain relevant academic and other records.

(4) LEAs shall develop and implement clear written procedures that comply with 20 U.S.C. 6312(c)(5)(B) and govern how transportation shall be provided, arranged, and funded to maintain a child in foster care in the school of origin, unless it is determined that remaining in the school of origin is not in the child's best interest.

(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; 46 Ky.R. 2152, 2804, 2929; eff. 9-1-2020.)