

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~~~~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 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~~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 issued pursuant to~~in~~ 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~~~~[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 ~~department~~~~[SEA]~~;

(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~~~~[SEA]~~, 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~~~~[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 ~~department~~~~[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.~~[.]~~

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~~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. 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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation amendment provides necessary updates to comply with changes to federal regulation. It provides detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(b) The necessity of this administrative regulation:

This administrative regulation is required to comply with changes to federal regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the new federal regulations by incorporating detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist with the effective administration of federal statutes by conforming to changes in federal regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment provides detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to conform to changes in federal regulation. Section 8503 of the ESEA requires states to adopt written procedures for the receipt and resolution of complaints.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to changes in federal regulation by providing detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(d) How the amendment will assist in the effective administration of the statutes:

This administrative regulation will assist with the effective administration of federal statutes by conforming to changes in federal regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Kentucky Department of Education, local education agencies, nonpublic schools, students served by nonpublic schools.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the

change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

This regulation requires that written complaints, determinations, and appeals include a description of applicable statutory and regulatory requirements; a description of the procedural history of the complaint; findings of fact supported by citation, including page numbers, to supporting documents; legal analysis and conclusion; corrective actions, if applicable; a statement of applicable appeal rights; a statement regarding the department's determination about whether it will provide services; and all documents reviewed by the department in reaching its decision, paginated consecutively.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no additional cost to any impacted agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulation provides the entities identified above with more clear guidelines related to complaints, determinations, and appeals of decisions made under the Elementary and Secondary Education Act of 1965.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no initial cost to the Kentucky Department of Education.

(b) On a continuing basis:

There will be no ongoing cost to the Kentucky Department of Education.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

No funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There are no fees associated with this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees associated with this regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied. The regulation applies uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

20 U.S.C. 6320, 20 U.S.C. 7844, 20 U.S.C. 7883

(2) State compliance standards.

The Kentucky Department of Education must comply with the Federal Elementary and Secondary Education Act (ESEA) as a condition of federal grant funding from the United States Department of Education. There are no parallel state law requirements for ESEA complaints governed by this regulation. KRS 156.010 provides that the "Department of Education shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for elementary and secondary education."

(3) Minimum or uniform standards contained in the federal mandate.

The federal regulation contains the minimum standards that must be included in a complaint under the ESEA. This regulation is being updated to conform to those minimum standards.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

20 U.S.C. 6320

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Kentucky Board of Education, the Department of Education, Local Education Agencies, and Nonpublic Schools

(a) Estimate the following for the first year:

Expenditures: There are no costs estimated in the first year.

Revenues: There will be no revenues generated in the first year.

Cost Savings: There will be no cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There are no expenditures, revenues, or cost savings related to this regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Local Education Agencies, nonpublic schools.

(a) Estimate the following for the first year:

Expenditures: There are no costs estimated in the first year.

Revenues: There will be no revenues generated in the first year.

Cost Savings: There will be no cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There are no expenditures, revenues, or cost savings related to this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

N/A

(a) Estimate the following for the first year:

Expenditures: There are no costs estimated in the first year.

Revenues: There will be no revenues generated in the first year.

Cost Savings: There will be no cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

There is no fiscal impact of this regulation.

(b) Methodology and resources used to determine the fiscal impact:

N/A

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The administrative regulation is not expected to have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

There is no fiscal impact of this regulation.