

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET
2 Kentucky Board of Education
3 Department of Education
4 (Amendment)
5 704 KAR 3:365. **Complaint procedures for programs under the Elementary and Secondary**
6 **Education Act of 1965.** [~~Chapter 1 complaint procedures.~~]
7 RELATES TO: KRS 156.010, [~~156.031,~~] **KRS** 156.035, [~~34 C.F.R. 200.73, 201.47,~~] **20 U.S.C.**
8 **6320, 20 U.S.C. 7844, 20 U.S.C. 7883**
9 STATUTORY AUTHORITY: KRS [~~156.031,~~] 156.035, **KRS** 156.070, **20 U.S.C. 6320, 20**
10 **U.S.C. 7844, 20 U.S.C. 7883**
11 NECESSITY, FUNCTION, AND CONFORMITY: **This administrative regulation establishes**
12 **complaint procedures pursuant to Sections 1117, 8304, and 8503 of Elementary and**
13 **Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act.**
14 **Section 8304 of ESEA requires the Kentucky Department of Education (department) to**
15 **adopt written procedures for the receipt and resolution of complaints alleging violations of**
16 **law in the administration of programs under ESEA. Further, Sections 1117 and 8503 of**
17 **ESEA require the department to resolve complaints related to equitable services to**
18 **nonpublic school children.** [~~KRS 156.031 requires that administrative regulations relating to~~
19 ~~statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary~~
20 ~~and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS~~
21 ~~156.010, 156.031, and 156.035 provide the state statutory framework for complying with federal~~
22 ~~funding programs and for receiving and allocating federal education funds; and 34 CFR 200.73 and~~
23 ~~34 CFR 201.47 require the Department of Education, when applying for participation in programs~~

1 for disadvantaged children under Chapter 1 of Public Law 100-297 (the Augustus F. Hawkins-
2 Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 20 USC
3 2701 to 2901), to show written evidence of complaint procedures particular to disadvantaged and
4 migrant children under Chapter 1. This administrative regulation establishes such complaint
5 procedures.]

6 Section 1. **Complaints Against a Local Education Agency.** [LEA Procedures.] (1) **Complaints**
7 **related to equitable services to nonpublic school children shall be governed by Section 3 of**
8 **this administrative regulation.**

9 **(2)** Complaints originating at the local level **alleging a violation by a local education agency**
10 **(LEA) of a federal statute or regulation that applies to a program under ESEA** [relative to

11 disadvantaged and migrant children under federal Chapter 1 programs] shall be **decided**
12 [entertained] by the **department** [Department of Education] only after such complaints have been
13 filed and heard at the local level in accordance with local education agency policy. [Such
14 complaints shall be in written form. Persons making written complaints shall register such
15 complaints with the Director, Division of Compensatory Education, Kentucky Department of
16 Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

17 ~~(2)~~ Written complaints requiring a formal hearing shall be referred to a complaint committee.
18 Members of this committee shall include, as a minimum, the chief state school officer (or
19 designee); Director, Division of Compensatory Education; unit director; and the program
20 consultant serving the affected LEA. The committee shall conduct a hearing within thirty (30) days
21 following the receipt of complaints requesting a formal hearing.]

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

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

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

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

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

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

13 **(5) Upon receipt of a complaint, the department shall carry out an investigation, if necessary.**

14 **During the investigation period:**

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

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

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

22 **1. Direct observation;**

23 **2. Interviews; or**

1 **3. Examination of records.**

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

5 **(7) The complainant or LEA shall have a right to request the Commissioner, or his designee,**
6 **reconsider the written decision in subsection (5). To initiate reconsideration, the complainant**
7 **or LEA shall send, by certified mail to the department, a written request within fifteen (15)**
8 **days of the issuance of the department's decision in subsection (6).**

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

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

15 **(a) A corrective action plan for the LEA;**

16 **(b) Follow-up visits by department staff to determine whether the LEA is taking the required**
17 **corrective action;**

18 **(c) Repayment of previously dispersed funds or withholding of future funds; or**

19 **(d) To the extent permissible under ESEA and other applicable laws and regulations, any**
20 **corrective action necessary to ensure compliance.**

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

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

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

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

10 **(a) A statement that a requirement that applies to an ESEA program has been violated by**
11 **the SEA;**

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

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

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

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

19 request for a formal hearing, the Department of Education shall make the necessary on-site
20 investigation of the complaint. Such on-site investigation shall:

21 ~~(1) Be made following adequate advance notice to the parties involved;~~

22 ~~(2) Include the gathering of information through interviews and examination of records,~~
23 ~~considering each allegation of the complaint; and~~

1 ~~(3) Provide appropriate opportunities for the complainant(s) and the LEA to present evidence~~
2 ~~concerning the allegations.]~~

3 Section 3. **Complaints Related to Equitable Services to Nonpublic School Children. (1)**

4 **Complaints related to equitable services to nonpublic school children shall be submitted to**
5 **the nonpublic school ombudsman by mail at the following address: Kentucky Department of**
6 **Education, c/o Nonpublic School Ombudsman, 300 Sower Boulevard – 5th Floor, Frankfort,**
7 **KY 40601.**

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

10 **(a) A statement that 20 U.S.C. 7881 has been violated by the SEA, an LEA, an education**
11 **service agency, a consortium of those agencies, or entity;**

12 **(b) The facts on which the statement is based and a description of the nature of the problem;**

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

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

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

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

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

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

3 **information through:**

4 **1. Direct observation;**

5 **2. Interviews; or**

6 **3. Examination of records.**

7 **(4) Within forty-five (45) days of receiving a complaint, the nonpublic school ombudsman**

8 **shall issue a final written decision for each allegation in the complaint.** [~~Opportunity shall be~~

9 ~~provided for the complainant or the complainant's representative, or both, and the LEA involved to~~

10 ~~submit evidence, including the opportunity to question parties to the dispute or any of their~~

11 ~~witnesses. All investigations and the solutions of complaints shall be completed within sixty (60)~~

12 ~~days unless the complainant(s) is notified, in writing, to the contrary. If exceptional circumstances~~

13 ~~exist with respect to a particular complaint, an extension of the time limit shall be granted by the~~

14 ~~Department of Education.]~~

15 Section 4. **Appeals to the United States Secretary of Education. An involved party may**

16 **appeal the final written decision of the department under Sections 1, 2 or 3 of this**

17 **administrative regulation to the United States Secretary of Education (Secretary) to the**

18 **extent permissible under ESEA and in accordance with written procedures developed and**

19 **implemented by the Secretary.** [~~An involved party may appeal the final Department of Education~~

20 ~~resolution to the United States Secretary of Education if notice of such appeal is filed with the~~

21 ~~secretary within thirty (30) days of the receipt of the Department of Education's written decision.~~

1 ~~Section 5. If the LEA fails to take corrective action following a final determination of a formal~~
2 ~~complaint, the Department of Education shall use one (1) or more of the following methods to~~
3 ~~assure such action:~~

4 ~~(1) Follow-up visits by Department of Education staff to determine whether the agency is taking~~
5 ~~the required corrective action;~~

6 ~~(2) Compliance agreement; and~~

7 ~~(3) Withholding of funds.~~

8 ~~Section 6. SEA Procedures. Complaints by an outside organization or individual may be filed~~
9 ~~through a written signed complaint concerning any alleged state (SEA) violation of a federal~~
10 ~~statute or regulation that applies to Chapter 1 LEA programs. The complaint shall include the facts~~
11 ~~on which the statement is based. Complainants shall register such complaints with the chief state~~
12 ~~school officer. The same procedures outlined in Sections 1, 2, 3, and 4 of this administrative~~
13 ~~regulation shall be followed insofar as practicable.~~

14 ~~Section 7. Dissemination, free of charge, of information concerning these procedures shall be made~~
15 ~~to all interested parties including district and school advisory councils.]~~