

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amendment)

5 704 KAR 3:292. **Education of migratory children.** [~~Chapter 1, ESSIA migrant education~~
6 ~~requirements.~~]

7 RELATES TO: KRS 156.010, **KRS 156.035, KRS 156.070, 20 U.S.C. 6391-6399**

8 STATUTORY AUTHORITY: KRS 156.070, **KRS 156.035, 20 U.S.C. 6391-6399**

9 NECESSITY, FUNCTION, AND CONFORMITY: **Section 1306 of the Elementary and**

10 **Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act**

11 **requires migratory education programs receiving funding under Title I, Part C to ensure the**

12 **unique educational needs of migratory children are identified and addressed. This**

13 **administrative regulation establishes, in accordance with Kentucky's consolidated State plan**

14 **under ESEA, how the Kentucky Department of Education (department) and its local**

15 **operating agencies comply with ESEA Section 1306.** [~~In accordance with Section 435 of the~~

16 ~~General Education Provisions Act and sections 1201, 1202, and 1203 of the Augustus F. Hawkins-~~

17 ~~Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the~~

18 ~~Department of Education, when applying to the U.S. Department of Education for participation in~~

19 ~~programs for migrant children under Chapter 1 of the Education Consolidation and Improvement~~

20 ~~Act of 1981, must submit an approvable plan and satisfactory assurances that all requirements of~~

21 ~~the law will be met. This administrative regulation implements the State Board for Elementary and~~

22 ~~Secondary Education's duties to develop education policy, to implement acts of Congress~~

~~appropriating and apportioning funds to the state and to provide for the proper apportionment and disbursement of federal migratory children funds in accordance with the state's current plan.]~~

Section 1. Definitions. (1) “Comprehensive needs assessment” means a systematic set of procedures that are used to determine needs, examine their nature and causes, and set priorities for future action.

(2) “Migratory child” or “migratory student” is defined in 20 U.S.C. 6399(3).

(3) “Migrant staff” means any individual that is fully or partially paid using migrant funds.

(4) “Out-of-school youth” means an individual who:

(a) Has not attained the age of twenty-one (21) years old;

(b) Has not completed high school or the equivalent thereof; and,

(c) Is not currently enrolled in an elementary or secondary school.

(5) “Qualifying move” is defined in 20 U.S.C. 6399(5).

(6) “Service delivery plan” means a set of principles, standards, policies, and constraints to be used to guide the designs, development, deployment, operation, and retirement of services.

Section 2 [+]. **Program development and implementation.** (1) The department [Department of Education] shall implement services to migratory children in accordance with Kentucky’s consolidated State plan under ESEA using a service delivery plan responsive to a comprehensive needs assessment [by making grants to local school districts which have concentrations of eligible migrant children].

(2) In the planning and operation of migratory education programs not less than one (1) school year in duration, the department and its local operating agencies shall consult with parents of migratory children and shall ensure such programs:

1 (a) Comply with the parental involvement requirements in 20 U.S.C. 6318, unless doing so
2 would be impractical; and

3 (b) Are understandable, in both format and language, to parents. ~~[Participating school districts~~
4 ~~shall submit an annual application for funds to provide services to eligible children].~~

5 (3) The department shall work closely with programs at the state, regional, and local levels to
6 identify and meet the needs of all migratory children, including preschool migratory students
7 and migratory children that have dropped out of school. Pursuant to 20 U.S.C. 6394(d),
8 priority shall be given to migratory children who have made a qualifying move within the
9 previous one (1) year period and who are failing, or most at risk of failing, or have dropped
10 out of school ~~[The application shall be authorized by the local board of education and be approved~~
11 ~~by the Department of Education].~~

12 (4) The department shall identify and recruit migratory children and may do so using:

13 (a) Statewide recruitment and training;

14 (b) Regionally-based recruitment and training; or

15 (c) Locally-based recruitment and training ~~[Participating school districts shall perform an~~
16 ~~annual assessment of the needs of eligible migrant children.]~~

17 (5) After a child is identified as migratory, the child shall be enrolled in all applicable
18 programs and provided access to other resources that address the child's specific educational
19 needs. The department may directly provide services to the child if the child's needs are not
20 being met by other available programs and resources ~~[Participating school districts shall~~
21 ~~coordinate the migrant program with other federal, state and local programs and agencies as~~
22 ~~appropriate].~~

23 (6) Migrant staff shall attend annual training as approved by the department.

Section 3 [2]. **Program evaluation.** (1) **The department and its local operating agencies shall establish objectives and evaluate outcomes for migratory education programs in the following areas:**

(a) Reading and writing;

(b) Math;

(c) High school dropout and prevention;

(d) School readiness; and

(e) Out-of-school youth [Persons coordinating the provision of services for eligible migrant children shall be required to hold certification as a teacher, counselor or social worker].

(2) **Information to be used by the department and its local operating agencies in evaluating migratory education program outcomes may include:**

(a) Data on student eligibility and enrollment as well as provided services;

(b) Assessment data which may include the record of state performance targets and outcomes for statewide assessments, kindergarten readiness screener results, end of course results, graduation rates, or local assessment results;

(c) Information on attendance, grades, and teachers of records;

(d) Parent surveys;

(e) Data from regionally-based recruitment and training programs; or

(f) Annual program monitoring results [Summer extended academic services shall be required of all local migrant projects for a duration of four (4) to six (6) weeks and no less than three (3) times per week for eligible students who are the most academically in need].

Section 4 [3]. **Coordination of Services.** (1) **Pursuant to 20 U.S.C. 6394(c)(1)(B), the department and its local operating agencies shall jointly plan migratory education programs**

1 **with similar programs within the state and in other states as well as with other federal**
2 **programs as appropriate** [~~Participating school districts shall involve migrant parents in the~~
3 ~~education of their children~~].

4 (2) **Pursuant to 20 U.S.C. 6394(b)(3), the department and its local operating agencies shall**
5 **facilitate educational continuity through the timely transfer of student records when children**
6 **move from one school to another.** [~~Each participating school district shall be required to form a~~
7 ~~local migrant parent advisory council and to convene the council a minimum of three (3) times per~~
8 ~~year.(5 Ky.R. 832; eff. 6-6-79; Am. 6 Ky.R. 546; eff. 6-4-80; 7 Ky.R. 784; eff. 5-6-81; 8 Ky.R.~~
9 ~~1162; eff. 6-2-82; 9 Ky.R. 1164; eff. 5-4-83; 10 Ky.R. 1097; eff. 5-1-84; 11 Ky.R. 1473; eff. 5-14-~~
10 ~~85; 12 Ky.R. 1637; eff. 5-6-86; 13 Ky.R. 1733; eff. 5-14-87; 14 Ky.R. 2216; eff. 7-21-88; 16~~
11 ~~Ky.R. 203; eff. 10-8-89; 17 Ky.R. 2047; eff. 2-7-91; 20 Ky.R. 3313; eff. 8-4-94.)~~]

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).

(Date)

Wayne D. Lewis, Jr., Ph.D.
Interim Commissioner of Education

(Date)

Hal Heiner, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November ____, 2018, at _____ in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days 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 canceled. 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 November 30, 2018.

CONTACT PERSON: Deanna Durrett, 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

Regulation Number: 704 KAR 3:292
Contact Person: Deanna Durrett, Deanna.durrett@education.ky.gov
Phone Number: 502-564-4474

(1) Provide a brief summary of:

(a) What this administrative regulation does: As amended, this regulation establishes the process the Kentucky Department of Education (KDE) and its local operating agencies will follow in order to comply with Section 1306 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act, which requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.”

(b) The necessity of this administrative regulation: Section 1306 of ESEA requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.” This administrative regulation establishes, in alignment with Kentucky’s consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes, in alignment with Kentucky’s consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.”

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes, in alignment with Kentucky’s consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.”

(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: As revised, this administrative regulation fulfills KDE’s requirement under Section 1306 to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.” The amendment also better aligns with ESEA as well as with current program operations at KDE and as set forth in Kentucky’s consolidated state plan under ESEA. Necessary technical amendments have also been made throughout the regulation and include: Amending the title of the regulation to better align with ESEA; correcting statutory references throughout to account for legal changes that have occurred since the regulation’s effective date; and, defining terminology used throughout the regulation.

(b) The necessity of the amendment to this administrative regulation: Previously, 20 USC 6362(f), which is no longer the law, stated, “Each local educational agency...shall submit an application to the State at such time, in such manner, and containing such other information as determined necessary by the State.” However, Section 1306 of ESEA, which is the current law, requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.” As revised, this administrative regulation establishes the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306.

(c) How the amendment conforms to the content of the authorizing statute: The amendment establishes, in alignment with Kentucky’s consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.”

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes, in alignment with Kentucky’s consolidated State plan under ESEA, the process KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.”

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KDE and its local operating agencies will be impacted by this regulation.

(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: KDE and its local operating agencies will be required to administer migrant education programs in compliance with the regulation, which aligns with Section 1306 of ESEA as well as Kentucky’s consolidated state plan.

(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 anticipated budget impact related to this administrative regulation for KDE or its local operating agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides for a transparent and efficient process that KDE and its local operating agencies will follow in order to comply with ESEA Section 1306, which requires KDE to ensure that KDE and its local operating agencies “identify and address the unique educational needs of migratory children in accordance with a comprehensive state plan.”

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

(a) Initially: Initial costs related to implementation of this administrative regulation are not anticipated because identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law.

(b) On a continuing basis: The administrative body incurs an ongoing cost of staff and resources in administering migratory education programs. There are, though, no additional anticipated costs related to this administrative regulation for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of this administrative regulation; however, ongoing costs of staff and resources for the administrative body related to this administrative regulation and its enabling statutes are paid using state and federal 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: An increase in fees or funding is not anticipated to be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied because this administrative regulation applies equally to KDE and its local operating agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 704 KAR 3:292
Contact Person: Deanna Durrett, Deanna.durrett@education.ky.gov
Phone Number: 502-564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KDE and its local operating agencies will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.035, and 20 U.S.C. 6391-6399.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law. As a result, this administrative regulation is not expected to impact the expenditures and revenues of any state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? Identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law. As a result, additional costs related to administering this program for the first year are not anticipated.

(d) How much will it cost to administer this program for subsequent years? Identifying and addressing the educational needs of migratory children was previously and continues to be required by federal law, and there is an ongoing cost of staff and resources to the administrative body related to this administrative regulation and its enabling statutes. There are, though, no additional anticipated costs related to this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A