

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 U.S.C.
10 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 Secondary
13 Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. Section 8304 of
14 ESEA requires the Kentucky Department of Education (department) to adopt written procedures
15 for the receipt and resolution of complaints alleging violations of law in the administration of
16 programs under ESEA. Further, Sections 1117 and 8503 of ESEA require the department to
17 resolve complaints related to equitable services to nonpublic school children. [~~KRS 156.031~~
18 ~~requires that administrative regulations relating to statutes amended by the 1990 Kentucky~~
19 ~~Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative~~
20 ~~Research Commission prior to December 30, 1990; and KRS 156.010, 156.031, and 156.035~~
21 ~~provide the state statutory framework for complying with federal funding programs and for~~
22 ~~receiving and allocating federal education funds; and 34 CFR 200.73 and 34 CFR 201.47 require~~
23 ~~the Department of Education, when applying for participation in programs for disadvantaged~~

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

Section 1. Complaints Against a Local Education Agency. [LEA Procedures.] (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 ~~[relative to disadvantaged and migrant children under federal Chapter 1 programs]~~ shall be decided ~~[entertained]~~ by the department ~~[Department of Education]~~ only after such complaints have been filed and heard at the local level in accordance with local education agency policy. ~~[Such complaints shall be in written form. Persons making written complaints shall register such complaints with the Director, Division of Compensatory Education, Kentucky Department of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.]~~

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

(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, KY 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;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific 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.

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

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

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

10 (a) A corrective action plan for the LEA;

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

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

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

16 Section 2. Complaints Against the State Education Agency. (1) Appeals relating to the
17 department's accountability classification of a school or district shall be governed by 703 K.A.R.
18 5:240 and not by this administrative regulation.

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

21 (3) All other complaints originating at the state level alleging a violation by the state education
22 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, KY 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 SEA;

(b) The facts on which the statement is based, a description of the nature of the problem, and the
specific 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. ~~Upon receipt of the request for
a formal hearing, the Department of Education shall make the necessary on-site investigation of the
complaint. Such on-site investigation shall:~~

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

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

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

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, KY 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 SEA, an LEA, an education service agency, a consortium of those agencies, or 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 SEA, LEA, education service agency, consortium of those agencies, or entity shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The 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.

1 (4) Within forty-five (45) days of receiving a complaint, the nonpublic school ombudsman shall
2 issue a final written decision for each allegation in the complaint. [Opportunity shall be provided
3 for the complainant or the complainant's representative, or both, and the LEA involved to submit
4 evidence, including the opportunity to question parties to the dispute or any of their witnesses. All
5 investigations and the solutions of complaints shall be completed within sixty (60) days unless the
6 complainant(s) is notified, in writing, to the contrary. If exceptional circumstances exist with
7 respect to a particular complaint, an extension of the time limit shall be granted by the Department
8 of Education.]

9 Section 4. Appeals to the United States Secretary of Education. An involved party may appeal the
10 final written decision of the department under Sections 1, 2 or 3 of this administrative regulation to
11 the United States Secretary of Education (Secretary) to the extent permissible under ESEA and in
12 accordance with written procedures developed and implemented by the Secretary. [An involved
13 party may appeal the final Department of Education resolution to the United States Secretary of
14 Education if notice of such appeal is filed with the secretary within thirty (30) days of the receipt of
15 the Department of Education's written decision.

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

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

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

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

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

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

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 3:365
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: This regulation establishes the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all programs under the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. This regulation also provides a clear process for the Kentucky Department of Education (KDE) to fulfill its obligations related to equitable service complaints.

(b) The necessity of this administrative regulation: Section 8304 of ESEA requires KDE to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs. ESEA also provides the right, in Section 1117, for complaints related to equitable services to nonpublic school children to be filed with KDE and requires, in Section 8503, KDE to resolve such equitable service complaints within 45 days of receipt.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides a clear process for KDE to fulfill its obligations related to equitable service complaints pursuant to Sections 1117 and 8503 of ESEA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides, pursuant to Sections 1117 and 8503 of ESEA, a clear process for KDE to fulfill its obligations related to equitable service complaints.

(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 8304 by creating complaint procedures for all programs administered under ESEA, not just Title I. This regulation, as amended, also provides a clear process for KDE to fulfill its obligations related to equitable service complaints. Necessary technical amendments have also been made throughout the regulation and include: Amending the title of the regulation to broaden the applicability of the regulation to include all complaints arising under ESEA; correcting statutory references throughout to account for legal changes that have occurred since the regulation's effective date; updating the agency's official mailing address within the regulation; and, removing outdated regulatory language.

(b) The necessity of the amendment to this administrative regulation: When this administrative regulation was initially adopted, ESEA only required written complaint procedures related to programs serving disadvantaged and migrant children under Title I, which was previously referred to as “Chapter 1.” Currently, Section 8304 of ESEA requires KDE to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs. As revised, this administrative regulation fulfills KDE’s requirement under Section 8304 by creating complaint procedures for all programs administered under ESEA, not just Title I. As revised, this administrative regulation also provides a clear process for KDE to fulfill its obligations related to equitable service complaints pursuant to Sections 1117 and 8503 of ESEA.

(c) How the amendment conforms to the content of the authorizing statute: The amendment establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides a clear process for KDE to fulfill its obligations related to equitable service complaints pursuant to Sections 1117 and 8503 of ESEA.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes, as required by Section 8304 of ESEA, the written procedures for the receipt and resolution of complaints alleging violations of law in the administration of all ESEA programs and provides, pursuant to Sections 1117 and 8503 of ESEA, a clear process for KDE to fulfill its obligations related to equitable service complaints.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies (LEAs), KDE, and any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA 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 is required to follow the procedures and timelines that are set forth in the regulation when resolving complaints alleging an LEA or KDE violated the law in administering one or more programs under ESEA. KDE is also required to follow the procedures and timelines that are set forth in the regulation for complaints related to equitable services to nonpublic school children. Any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA is required to follow the procedures and timelines that are set forth in the regulation as well as all other mandates within the regulation, including the requirement that complainants alleging an LEA violated the law in administering one or more programs under ESEA are required to seek a resolution at the local level before filing such allegations with KDE.

(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 LEAs, KDE, or any entity or person alleging an LEA or KDE

violated the law in administering one or more programs under ESEA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides streamlined, efficient procedures for receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children. This administrative regulation also provides clarity and transparency regarding the processes KDE will implement in receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children.

(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 as this regulation clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to ESEA.

(b) On a continuing basis: The administrative body incurs an ongoing cost of staff and resources in receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children. 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. This regulation does not create additional responsibilities on the part of KDE but, instead, clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to ESEA.

(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 local education agencies (LEAs), KDE, and entities or persons alleging an LEA or KDE violated the law in administering one or more programs under ESEA.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 704 KAR 3:365
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? Local education agencies (LEAs), the Kentucky Department of Education (KDE), and any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.035, KRS 156.070, 20 USC 6320, 20 USC 7844, and 20 USC 7883.

(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. This regulation does not create additional responsibilities on the part of LEAs, KDE, or any entity or person alleging an LEA or KDE violated the law in administering one or more programs under ESEA. Instead, this regulation clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. 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? Initial costs related to implementation of this administrative regulation are not anticipated as this regulation clarifies existing procedures KDE has related to complaints alleging violations of law in the administration of federal programs and aligns such to ESEA.

(d) How much will it cost to administer this program for subsequent years? The administrative body incurs an ongoing cost of staff and resources in receiving and resolving complaints alleging violations of law in the administration of all ESEA programs as well as complaints related to equitable services to nonpublic school children. There are, though, no additional anticipated costs related to this administrative regulation for the administrative body.

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