

**STATEMENT OF CONSIDERATION
RELATING TO 704 KAR 3:365
Complaint procedures for programs under the Elementary and Secondary Education Act
of 1965.**

**Kentucky Board of Education
Department of Education**

Not Amended After Comments

1. A public hearing was held for the above regulation on November 29, 2018 at 10:00 a.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky. At the public hearing, no public comments were received on this regulation.

2. The following individuals submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Michael Earl Hay, Director	Southern Kentucky Migrant Education Program (and member of Kentucky's Committee of Practitioners)
Whitney Hayse, Staff Attorney	Kentucky Protection and Advocacy

3. The following people from the promulgating administrative body responded to written comments:

Name and Title
Dr. Kelly Foster, Associate Commissioner, Office of Continuous Improvement and Support
Deanna Durrett, General Counsel, Office of Legal Services
Todd G. Allen, Deputy General Counsel, Office of Legal Services
Tara Rodriguez, Division of School and Program Improvement Director, Office of Continuous Improvement and Support
David Millanti, Division of School and Program Improvement Assistant Director, Office of Continuous Improvement and Support
Whitney A. Crowe, Executive Advisor, Office of Continuous Improvement and Support

Summary of Comments and Responses

(1) Subject Matter: Inclusion of the Specific Timeline for Appeals to the United States Secretary of Education.

(a) Comment: Commenter requested the following language be added to Section 4 of the regulation: An involved party concerning an equitable service complaint in a nonpublic school may appeal the final Department of Education resolution to the United States Secretary of Education if notice of the appeal is filed with the Secretary within thirty (30) days of the receipt of the Department of Education’s written decision.

(b) Response: The agency carefully reviewed these comments.

The commenter correctly states that the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act, provides for an appeal to the United States Secretary of Education for complaints related to equitable services for nonpublic school children. Specifically, 20 U.S.C. 7883(b) says, “The resolution may be appealed by an interested party to the Secretary not later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within the 45-day time limit.”

As with language already adopted in state statute, KRS 13A.120(2)(e) prohibits the promulgation of administrative regulations when federal law “prescribes the same or similar procedure for the matter regulated.” Because appeals to the United States Secretary of Education of complaints related to equitable services for nonpublic school children are already addressed in ESEA and because the inclusion in state regulation of matters already set forth in federal law is prohibited by KRS Chapter 13A, the Kentucky Department of Education (KDE) declines to include the commenter’s recommended text in 704 KAR 3:365, Section 4.

Further, KRS 13A.120(4) states, “Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable.” The decision not to incorporate the additional language proposed by the commenter is necessary to ensure 704 KAR 3:365 is not “null, void, and unenforceable” under KRS 13A.120.

No amendments have been made in response to these comments.

(2) Subject Matter: Establishment of a Detailed Process for Equitable Services Complaints.

(a) Comment: Commenter states, “I understand there are other regulations and processes being implemented to ensure equitable services to all students—public and nonpublic. This regulation seems to cover the much needed detail process for those wishing to file complaints.”

(b) Response: The agency carefully reviewed these comments.

The commenter does not request the agency make any changes to the proposed regulation and correctly notes that this regulation, as amended, puts an individual seeking to file an equitable services complaint on notice of the processes and timelines to be used by KDE, which is in compliance with ESEA. Specifically, Sections 1117 and 8503 of ESEA require KDE to receive complaints related to equitable services for nonpublic school children and resolve such complaints within 45 days of receipt.

No amendments have been made in response to these comments.

Summary of Statement of Consideration
And Action Taken by Promulgating Administrative Body

The public hearing on this administrative regulation was held on November 29, 2018 at 10:00 a.m. Eastern Time, in the State Board Room, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky. At the hearing, no public comments were received on this regulation; however, written comments were received related to the (1) inclusion of the specific timeline for appeals to the United States Secretary of Education and (2) establishment of a detailed process for equitable services complaints. The agency declined to make amendments to the regulation as proposed by written comments received.