
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

Arkansas State Procedures – McKinney-Vento Act Dispute Resolution

Pursuant to the McKinney Vento Homeless Assistance Act, a Local Education Agency (“LEA”) must continue to educate the child or unaccompanied youth in the school of origin for the duration of homelessness when the homelessness occurs between or during an academic year; or for the remainder of the academic year if the child or unaccompanied youth becomes permanently housed during the academic year; or enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is living are eligible to attend. McKinney Vento Act § 722(3)(A)(i)(ii). Similar provisions apply to the placement of unaccompanied youths. Arkansas follows the sentiment of the federal McKinney Vento Act.

Step One: School Enrollment

If a dispute arises over school selection or enrollment, the LEA must immediately enroll the student in the school in which enrollment is sought pending resolution of the dispute. § 722(3)(E)(i).

Step Two: Dispute Resolution Process

In Arkansas, the dispute resolution process with regard to homeless education abides by the Arkansas Department of Education Rules Governing Federal Program Complaint Resolution. A complaint may be filed against the LEA by providing a statement signed by the complainant. 2.01. Complaints must include a statement that describes how the LEA violated a requirement of the McKinney Vento Act, facts related to the violation, and all relevant documents and evidence. 2.02. The Department of Education may waive this requirement if delay would cause serious harm to the complainant, allegations and supporting information provide sufficient evidence to show probable success of the complaint on its own merits, or there is evidence the LEA is aware of the violation and failed to resolve it. 2.03.

If the complaint was not previously submitted to the LEA, the complaint will be referred by the Department of Education to the LEA for processing through their resolution procedures. 2.03. A transmittal letter shall direct the resolution of the complaint under the adopted procedures of the LEA within a time period not to exceed thirty days. 2.03.2. The transmittal letter must include information with regard to the rights of the complainant to appeal the final written report to the Department of Education. 2.03.2. Every LEA must distribute adequate information about its complaint procedures to the parents of students and appropriate private school officials, free of charge. 2.03.3.

The Department of Education will conduct any investigative efforts it deems necessary to effectively address the complaint. 2.04. This may include informal fact finding hearings or mediations. 2.04. It will then issue a preliminary report within forty days of receipt of the complaint. 2.05. The report will be issued to the complainant and the LEA. 2.05. It will state a summary of the allegations, the name of the individual making the complaint, a summary of any

investigative activities performed, summary of the findings with regard to each violation, and statement of the corrective actions needed to resolve the findings. 2.05.

After reviewing the findings, the complainant and LEA may submit written responses or additional evidence within thirty days of the date of the preliminary report. 2.05. Failure to respond is considered to be acceptance of every part of the report. 2.05.

A final report shall be issued by the Assistant Commissioner of Learning Services within ten days of the end of the response period. 2.07. The final report may affirm and adopt the findings of the preliminary report or make substitute findings. 2.07.

This procedure may not be used to serve a complaint against the Arkansas State Board of Education or Department of Education. 2.01. Additionally, the Department of Education may grant extensions of any time limit in exceptional circumstances. 2.08.

The complainant may request for the Secretary of the U.S. Department of Education to review the Arkansas Department of Education’s final report. 2.09. A request for review must be filed with the Secretary within thirty days of the Arkansas Department of Education’s final report. 2.09. A copy also must be provided to the Arkansas Department of Education. 2.09.

Appeal Documents and Timeline for Filing an Appeal

Name of Form:	Completed by:	Given to:	Due Date:
Complaint	Parent, guardian, or homeless student	Mailed to Arkansas Department of Education	-
If not already submitted to LEA’s dispute resolution procedures, transmitted there.	Department of Education	LEA	-
Department of Education investigation	Department of Education	-	-
Preliminary Report	Department of Education	Complainant and LEA	Within 40 days of receiving complaint
Responses to Preliminary Report	Complainant or LEA	Department of Education	Within 30 days of the preliminary report
Final Report	Department of Education, Assistant Commissioner or Learning Services	Complainant and LEA	Within 10 days of the end of the response period
Appeal to U.S. Department of Education	Complainant	Secretary of U.S. Department of Education	Within 30 days of the final report

Additional Information

State Coordinator Contact Information: Dana Davis, Arkansas Department of Education Public School Program Advisor, Four Capitol Mall, Slot #26, Little Rock, Arkansas 72201, (501)683-5428, Fax: (501)682-5136

All districts are required to identify a Homeless Liaison. The list of the liaisons is compiled by Dana Davis, Arkansas Department of Education Public School Program Advisor. The list is still being compiled as of 10/4/2012 and should be completed by end of fall 2012. Please contact Ms. Davis to receive a copy of the list.

For additional information, please visit the Arkansas Department of Education website for Homeless Education Services, <http://www.arkansased.org/divisions/learning-services/federal-programs/homeless%20education%20services>

Sample Enrollment Form

http://www.arkansased.org/public/userfiles/Learning_Services/Federal%20Programs/Homeless%20Programs/Sample_Enrollment_Form.doc

ARKANSAS DEPARTMENT OF EDUCATION RULES GOVERNING FEDERAL PROGRAM COMPLAINT RESOLUTION

November 8, 2010

1.00 Regulatory Purpose & Authority.

1.01 These Rules shall be known as the Arkansas Department of Education Rules Governing Federal Program Complaint Resolution.

1.02 The State Board of Education enacts these Rules pursuant to its authority under Arkansas Code Annotated §§ 6-11-105 & 25-15-201 et seq.; 20 U.S.C. §§ 1232c, 7844, & 7883; 42 U.S.C. § 11432; and 34 C.F.R. Chapter 2, Part 299, Subpart F.

1.03 The purpose of these Rules is to provide a procedure for receiving, reviewing, and resolving complaints made by organizations or individuals against the Arkansas State Board of Education (State Board), Arkansas Department of Education (Department), other state agency, or a local educational agency (LEA). These Rules apply only to complaints regarding the educational placement of homeless children and youths pursuant to the McKinney-Vento Homeless Education Assistance Improvement Act, and the administration of the following programs contained within the Elementary and Secondary Education Act (ESEA):

(1) Part A of Title I (Improving Basic Programs Operated by Local Educational Agencies);

(2) Part B of Title I (Even Start Family Literacy Programs) (other than the federally administered direct grants for Indian tribes and tribal organizations, children of migratory workers, Statewide family literacy initiatives, and a prison that house women and children);

- (3) Part C of Title I (Migrant Education);
- (4) Part D of Title I (Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out);
- (5) Title II (Eisenhower Professional Development Program) (other than section 2103 and part C of this Title);
- (6) Title III (Language Instruction for Limited English Proficient and Immigrant Students);
- (7) Subpart 2 of Part A of Title III (State and Local Programs for School Technology Resources);
- (8) Part A of Title IV (Safe and Drug-Free Schools and Communities) (other than section 4114);
- (9) Part A of Title V (Innovative Programs);
- (10) Title VI (Innovative Education Program Strategies);
- (11) Part C of Title VII (Emergency Immigrant Education); and
- (12) Section 9503 (Equitable participation of private school students in public school programs).

1.04 In computing any period of time described in these Rules, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, or other day the Department is closed, in which event the period runs until the end of the next day that the Department is open. Days shall be counted on the basis of calendar days.

2.00 Complaints Against Local Educational Agencies or State Agencies

2.01 A complaint against an LEA, or against a state agency other than the Arkansas State Board of Education and Department of Education, may be made in a statement signed by the complainant. Complaints may be received directly from the complainant, referred from other state or federal agencies, or come on appeal from an LEA. Complaints should be mailed to:

Arkansas Department of Education
Assistant Commissioner for Learning Services
Four Capitol Mall, Room 306-B
Little Rock, AR 72201

2.02 A complaint must include:

2.02.1 A statement that the LEA or state agency has violated a requirement of an applicable federal statute or regulation;

2.02.2 The facts on which the statement is based and the specific requirement allegedly violated; and

2.02.3 All relevant documentary or other evidence supporting the allegation.

2.03 If the complainant has not previously submitted the complaint to the LEA or state agency, the complaint will be referred by the Department to the LEA or state agency for processing through that agency's complaint resolution procedures.

2.03.1 The Department may waive this requirement if it is determined that:

2.03.1.1 Delay in resolving the complaint may result in serious and immediate harm to the complainant;

2.03.1.2 The allegations and supporting information, together with readily available cross-check data in the files of the Department, provide sufficient evidence to show probable success of the complaint on its own merits; or

2.03.1.3 There is evidence that the LEA or state agency is aware of the alleged violation and has failed to act to resolve it.

2.03.2 When a complaint is referred to an LEA or state agency for resolution under this subsection, a transmittal letter shall direct the resolution of the complaint under the adopted procedures of the LEA or state agency within a time period not to exceed thirty (30) days, unless a longer period is specified by the Department due to exceptional circumstances. The transmittal shall also provide information on the rights of the complainant to appeal the final written report of the agency to the Department. A copy of the transmittal letter shall be sent to the complainant.

2.03.3 Every LEA is required to disseminate, free of charge, adequate information about its complaint procedures to parents of students, and appropriate private school officials or representatives.

2.04 The Department shall conduct any investigative efforts it deems necessary to effectively address the complaint. Such efforts may include the appointment of an investigative team to conduct an on-site visit, review records, or conduct interviews. The Department may conduct informal fact-finding hearings or mediations to clarify the issues.

2.05 Within forty (40) days of the Department's receipt of a complaint, the Department shall issue to the complainant and to the LEA or state agency a preliminary report stating:

2.05.1 A summary of the substance of the allegations in the complaint and the name of the individual, group or agency making the complaint;

2.05.2 A summary of the Department's investigative activities, if any;

2.05.3 A summary of the findings concerning each alleged violation or implied violation; and

2.05.4 A statement of the corrective actions, if any, needed to resolve the findings, including a recommendation for an independent audit if deemed appropriate.

2.06 The complainant and the LEA or state agency may submit written responses or additional evidence within thirty (30) days of the date of the preliminary report. Failure to timely respond to the preliminary report shall be considered as acceptance of every part of the report.

2.07 Within ten (10) days of the end of the response period set forth in section 2.06 above, the Assistant Commissioner of Learning Services shall issue to the complainant and to the LEA or state agency a final report. The final report may affirm and adopt the findings of the preliminary report, or it may make substitute findings.

2.08 The Department may in exceptional circumstances grant extensions of any time limit in this section on its own initiative or on the request of a party.

2.09 The complainant may request the Secretary of the U. S. Department of Education to review the Department's final report, at the Secretary's discretion. A request for review must be filed with the Secretary, with a copy to the Arkansas Department of Education, within thirty (30) days of the date of the Department's final report. On request, the Department will promptly provide the complainant with a copy of the preliminary report and final report, and all pertinent exhibits thereto.

2.10 Nothing in this section shall prohibit informal disposition of a complaint by stipulation, mediation, settlement, consent order, or default.

3.0 Complaints Against the Arkansas State Board of Education or Arkansas Department of Education

3.01 Complaints against the Arkansas State Board of Education and/or Arkansas Department of Education may be made in a statement signed by the complainant. Complaints must be filed within thirty (30) days of the action or inaction complained of. Complaints should be mailed to:

Arkansas Department of Education
Assistant Commissioner for Learning Services
Four Capitol Mall, Room 306-B
Little Rock, AR 72201

3.02 A complaint must include:

3.02.1 A statement that the State Board and/or Department has violated a requirement of an applicable federal statute or regulation;

3.02.2 The facts on which the statement is based and the specific requirement allegedly violated; and

3.02.3 All relevant documentary or other evidence supporting the allegation.

3.03 Within ten (10) days of receipt of a complaint meeting the requirements of this section, the Commissioner of Education shall appoint an investigating officer to adjudicate the complaint. The investigating officer shall promptly issue a briefing schedule setting time limits for the submission of briefs, affidavits, declarations, exhibits, or other documents by the parties. Upon the request of any party, the investigating officer shall set a hearing date within sixty (60) days of the request.

3.04 The investigating officer shall conduct him- or herself in an impartial manner and shall have power to maintain order to rule upon all questions arising during the course of the complaint resolution process; to hold conferences for the settlement, clarification, or simplification of issues; and to regulate and guide the course of the complaint resolution process.

3.05 The investigating officer shall conduct the complaint resolution process in such a manner as to preserve privileges and protect privacy rights, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; the Arkansas Freedom of Information Act, Ark. Code Ann. § 25-19-101 et seq.; and any other relevant federal or state law or regulation.

3.06 All testimony, whether written or oral, shall be given under oath. Any hearing shall be stenographically recorded at the Department's expense by a certified court reporter who shall administer oaths to every witness. Every party shall have the right to appear in person or by counsel.

3.07 Travel and other expenses incurred by the investigating officer shall be reimbursed from appropriate federal program funds at the rate allowed for employees of the State of Arkansas. At the option of the Department, a pre-negotiated per diem may be paid in lieu of expenses to persons who are not employed by the State of Arkansas.

3.08 Within sixty (60) days of the receipt of the complaint, or of the date of the hearing, whichever is later, the investigating officer shall issue a written decision which shall include findings of fact and conclusions of law separately stated addressing every issue raised in the complaint. Copies of the decision shall be served on the complainant and the Department either personally or by mail.

3.09 The investigating officer may in exceptional circumstances grant extensions of any time limit in this section on his or her own initiative or on the request of a party.

3.10 The complainant may request the Secretary of the U. S. Department of Education to review the investigating officer's decision, at the Secretary's discretion. A request for review must be filed with the Secretary, with a copy to the Arkansas Department of Education, within thirty (30) days of the complainant's receipt of the investigating officer's decision. On request, the Department will promptly provide the complainant with a copy of the hearing transcript and all exhibits introduced into evidence at the hearing.

3.11 Nothing in this section shall prohibit informal disposition of a complaint by stipulation, mediation, settlement, consent order, or default.