

“Hearing impairment” sometimes referred to as “deaf” or “hard of hearing”, means a hearing loss that:

4. (a) may be mild to profound, unilateral or bilateral, permanent or fluctuating, and is determined by:
 - a. an average pure-tone hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 25dB in the better ear; or
 - b. an average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or
 - c. an average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear; and
2. (b) results in difficulty identifying linguistic information through hearing; and
3. (c) has an adverse effect on the child’s educational performance.

“High school diploma” means the student has completed the required course of study with the minimum number of credit hours as required by 704 KAR 3:305 and any applicable local district requirements. “High school diploma” does not mean a certificate of attainment or a GED.

“Home school” means for purposes of 707 KAR Chapter 1 only, a private school primarily conducted in one’s residence.

“IDEIA” means the Individuals with Disabilities Education Improvement Act, 20 U.S.C. Section 1400 through 1450, as amended.

“Independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

“Individual education program” or IEP means a written statement for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

“Interpreting services” means, with respect to children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services such as communication access real-time translation (CART) C-Print and TypeWell and special interpreting services for children who are deaf-blind.

“Interviews” include interviews with parents, teachers, related services personnel, and other caregivers as well as with the student, if appropriate. The information gathered during the interview process may include instructional history, social history, medical information, learning preferences, and other data.

“Legal Guardian” means an individual, agency, or corporation appointed by the District Court to have care, custody, and control of a minor who has been declared legally incompetent pursuant to KRS Chapter 387. SCSD obtains an official copy of the court order appointing a legal guardian.

“Local educational agency” or LEA means a public local board of education or other legally constituted public authority that has either administrative control or direction of public elementary or secondary schools in a school district or other political subdivision of the Commonwealth. LEA also means any other public institution or agency, including the Kentucky School for the Blind (KSB) and the Kentucky School for the Deaf (KSD), that is charged by state statute with the responsibility of providing educational services to children with disabilities.

“Mental disability” means that a child has one of the following:

1. a mild mental disability (MMD) in which:
 - a. cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;
 - b. adaptive behavior deficit is at least two (2) standard deviations below the mean;

comprehend or apply reading, mathematical, writing, reasoning, listening, or speaking skills to the extent that specially designed instruction is required to benefit from education. The specific learning disability (LD) may include dyslexia, dyscalculia, dysgraphia, developmental aphasia, and perceptual/motor disabilities. The term does not include deficits that are the result of other primary determinant or disabling factors such as vision, hearing, motor impairment, mental disability, emotional-behavioral disability, environmental or economic disadvantage disadvantaged, cultural factors, limited English proficiency, or lack of relevant research-based instruction in the deficit area.

“Speech or language impairment” means a communication disorder, including stuttering, impaired articulation, a language impairment, a voice impairment, delayed acquisition of language, or an absence of language, that adversely affects a child’s educational performance.

“Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

“Tests” include individual and group measures of ability or aptitude, performance-based assessments, norm-referenced or criterion-referenced achievement measures (national, state, or local), adaptive behavior scales, measures of motor function, speech and language, and other tests.

“Transition Services” means a coordinated set of activities for a child with a disability that:

1. is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
2. is based on the individual student’s needs, taking into account the child’s preferences and interests; and
3. includes:
 - a. instruction;
 - b. related services;
 - c. community experiences;
 - d. the development of employment and other post-school adult living objectives; and
 - e. if appropriate, acquisition of daily living skills and functional vocational evaluation.

“Traumatic brain injury” or TBI means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one or more areas, including:

1. cognition;
2. language;
3. memory;
4. attention;
5. reasoning;
6. abstract thinking;
7. judgment;
8. problem-solving;
9. sensory, perceptual, and motor abilities;
10. psychosocial behavior;
11. physical functions;
12. information processing; and
13. speech.

“Travel training” means instruction to children with significant cognitive disabilities and any other children with disabilities, as appropriate, to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move affectively and safely from place to place within that environment such as school, home, work and community.

“Visual impairment (VI)” “Visual impairment”, or “VI” means a child has a vision loss, even with correction, that:

(a) requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration;

(b) has an adverse affect effect on the child's educational performance; and

(c) meets the following:

1. the child has a visual acuity with prescribed lenses that is 20/70 or worse in the better eye; or

2. the child has a visual acuity that is better than 20/70 and the child has one (1) of the following conditions:

1. a medically diagnosed progressive loss of vision;

2. a visual field of 20 degrees or worse;

3. a medically diagnosed condition of cortical blindness; or

4. a functional vision loss.

“Ward of the state” means a child who has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice through a legal process, whether the commitment is voluntary or non-voluntary and the biological or adoptive parental rights have been terminated.

“Weapon” means “dangerous weapon” as defined in 18 U.S.C. Section 930 g 2. A weapon, in accordance with that definition, “is a device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death, or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.”

- b. reviewing the individual evaluation information;
- c. determining if the child continues to meet eligibility for a disability and
- d. proposing or refusing continuation or change in placement.

At the beginning of each ARC meeting, the ARC Chairperson describes the ARC process which may include the following:

- 1. The tasks the ARC will complete during the meeting.
- 2. Each ARC member has an opportunity to share information.
- 3. ARC members discuss and consider information brought by any member, including parents, before any group decision is made.
- 4. Parents and school personnel have an active and equal role in the discussion and decisions about services for the child.
- 5. The ARC members discuss all information during the meeting.
- 6. For each piece of information presented, the ARC members use consensus to decide whether or not the information is adequate or if more information is needed.
- 7. The issues discussed and reasons for the decisions are written in the Conference Summary.
- 8. The ARC uses consensus for all decision making.

NOTICE OF PARENTAL PROCEDURAL SAFEGUARDS

Written Notice of Parental Procedural Safeguards (Parent Rights)

A copy of the procedural safeguards (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

- (a) upon initial referral or parent request for evaluation;
- (b) upon receipt of the first state written complaint;
- (c) upon the receipt of the first filing of a due process hearing in a school year;
- (d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
- (e) upon request by a parent.

The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.

707 KAR 1:340 Section 4 5 (1-2)
34 CFR 300.504 (a)

The ARC Chairperson provides a copy of the Parent Procedural Safeguards document at each annual review and:

- (a) upon initial referral or parent request for evaluation;
- (b) upon receipt of the first state written complaint;
- (c) upon the receipt of the first filing of a due process hearing in a school year;
- (d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
- (e) upon request by a parent.

Changes to an IEP

An ARC shall not have to be convened in order to make minor, non-programmatic, changes to an IEP, such as typographical errors, incorrect directory information about the student (i.e., birth date, age, grade, address, school, etc.), and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the LEA makes any minor, non-programmatic changes, all members of the ARC shall be given a copy of the changes and an explanation as to why the changes were made within ten (10) school days of the changes being made. If any member of the ARC objects to the changes, an ARC meeting shall be convened within a reasonable period of time to discuss the changes.

Upon discovery of any errors on the IEP, the ARC member that finds the error notifies the ARC Chairperson that changes need to be made. The ARC Chairperson allows minor, non-programmatic changes to an IEP to include:

- a. typographical errors;
- b. incorrect directory information about the student (i.e., birth date, age, grade, address, school, etc.); and
- c. other information required on the IEP that was agreed upon by the ARC but incorrectly recorded or failed to document (e.g., beginning/ending dates, amount of time for services, type of service, etc.).

Within ten (10) days of the changes, the ARC Chairperson provides to all ARC members a copy of the changes and an explanation of why they were made. If any ARC member disagrees, the member requests an ARC meeting to discuss the changes.

Audio or Video Recordings of ARC Meetings

The LEA has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.

34 CFR Part 300 Appendix A, Q. 21

SCSD has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at ARC meetings. The ARC Chairperson, in consultation with the Director of Special Education, determines, on a case-by-case basis, the SCSD decision when a request is made for audio or video recording of any ARC meeting.

If parents can demonstrate that recording the ARC meeting is necessary to their participation and understanding of the proceedings, then SCSD takes necessary action to ensure the parents understand the ARC meeting.

Any recording of an ARC meeting that is maintained by the SCSD is an "education record" as defined by the Family Educational Rights and Privacy Act. The recording is subject to confidentiality requirements of the regulations under both FERPA and 707 KAR 1:360, Confidentiality. The ARC Chairperson ensures that any such recording is maintained as a part of the child's special education record and the parent is granted access to the recording.

~~Written Notice of Proposed or Refused Action (Conference Summary) Prior Written Notice to Parents (Conference Summary)~~

~~SCSD has a Notice of Proposed or Refused Action (i.e., Conference Summary form) that includes all necessary components as follows:~~

The Prior Written Notice required for 707 KAR 1:340 Section 4 (1) shall include:

- (1) An LEA shall provide written notice to the parents of a child with a disability within a reasonable time before the LEA implements:
 - (a) A proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or,
 - (b) A refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

The notice required for 707 KAR 1:340 Section 3 (1) shall include: The Prior Written Notice for 707 KAR 1:340 Section 4 (2) shall include...

- (a) a description of the action proposed or refused by the LEA;
- (b) an explanation of why the LEA proposes or refuses to take the action;
- (c) a description of any other options the LEA considered and the reasons why those options were rejected;
- (d) a description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;
- (e) a description of any other factors that are relevant to the LEA's proposal or refusal;
- (f) a statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 CFR Section 300.504, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- (g) sources for the parent to contact to obtain assistance in understanding the provision of this section.

707 KAR 1:340 Section 3 (3)

707 KAR 1:340 Section 4 (2)

34 CFR 300.503 (b)

The ARC Chairperson gives the parents a copy of the Conference Summary each time SCSD proposes or refuses to initiate, continue, or change the identification, evaluation, or placement of the child or provision of a free appropriate public education to a child.

Parents receive a copy of the Conference Summary regardless of whether they attend the ARC meeting. The ARC Chairperson mails a copy of the Conference Summary, with a copy of a proposed IEP, if applicable, to parents who did not attend the meeting. If the parent attended the meeting, copies of these documents are given to the parent at the close of the meeting.

If the parent agrees with the ARC decision(s), the proposed action as described is implemented. If the parent was not present at the meeting, the school initiates the action described in the Conference Summary.

- (1) Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide a written notice to the parents of a child with a disability at least seven (7) days before a meeting in which the LEA:
 - (a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (2) An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

707 KAR 1:340 Section 3 (1) & (2)

34 CFR 300.503 (a)

On the date the decision is made to pursue a disciplinary change of placement, the ARC Chairperson sends the parent a notice of the proposed disciplinary action according to SCSD Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **Notice of ARC Meetings in PROCEDURAL SAFEGUARDS**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due to a violation of the Student Code of Conduct. See also **Change in Placement for Disciplinary Removals** in procedures for **DISCIPLINE**.

Notices in Native Language or other Mode of Communication

The notice required by ~~707 KAR 1:340 Section 3~~ 707 KAR 1:340 Section 4 shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of this translation.

~~707 KAR 1:340 Section 3 (4)~~
707 KAR 1:340 Section 4 (3)
34 CFR 300.503 (c)

The ARC Chairperson determines the language or mode of communication used by the parent of the child and provides notice in that language or mode of communication unless it is clearly not feasible to do so. The native language of the parent of a child is the primary language used in the home (i.e., the language most frequently used for communication by the parent of the child). If the native language or mode of communication is not English, the ARC Chairperson informs the Director of Special Education of the need for a translation or interpretation of the notice. The Director of Special Education makes sure:

1. that the notice is translated to the parent in his native language or other mode of communication; and
2. that there is written evidence of the translation.

If SCSD can not obtain a translated form, the Director of Special Education contacts the Kentucky Department of Education for support in obtaining the translations.

The Director of Special Education obtains the necessary translation or interpretation. The Director of Special Education maintains copies of all letters of correspondence involved in securing the necessary interpretation or translation of a notice, and a copy of the translation.

PARENTAL CONSENT

An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

707 KAR 1:340 Section 5- 6(1)
34 CFR 300.300 (a)

The ARC Chairperson makes sure that the parent of the child gives voluntary informed consent by reviewing the information with the parent and giving the parent of the child time to consider the request for consent.

Consent for Initial Evaluation

The ARC Chairperson obtains written parental consent before any procedures are used selectively with an individual child to determine if the child has a disability and needs special education and related services.

The SCSD Consent for Evaluation form and the Evaluation Plan includes the areas related to the suspected disability, (e.g., health, vision and hearing, motor abilities, social and emotional, general intelligence, academic performance, and communication status).

The written consent statement includes a place for the date and the parent's signature and states that the parent understands and agrees:

1. to a full and individual evaluation of the child in all areas related to the suspected disability by the multidisciplinary team; and
2. consent is given voluntarily.

The ARC Chairperson gives the request for Consent for Evaluation and the Evaluation Plan to the parent with the Conference Summary.

Parental consent shall not be required before:

- (i) reviewing existing data as part of an evaluation or a reevaluation; or
- (ii) administering a test or other evaluation that is administered to all children unless consent is required of parents of all children before administration of that test or evaluation.

707 KAR 1:340 Section 5 6 (8)

34 CFR 300.300 (d) (1)

Denial of Parent Consent for Initial Evaluation

If the parent of a child with a disability refuses consent for an initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in this section (707 KAR 1:340) for mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

707 KAR 1:340 Section 5 6 (2)

34 CFR 300.300 (a) (3)

If the parent denies consent for an initial evaluation, the ARC Chairperson contacts the Director of Special Education regarding the refusal. When parent and SCSD personnel disagree on consent for initial evaluation, the parties may request mediation, or either party may request a dispute resolution meeting or a due process hearing to obtain consent for the proposed evaluation (according to **Mediation, Dispute Resolution, and Due Process Hearing** in procedures for **PROCEDURAL SAFEGUARDS**).

Consent When the Child is in the Custody of the State or is a Foster Child

If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if:

- (a) despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);
- (b) the rights of the parent(s) have been terminated by a court of competent jurisdiction; or
- (c) the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

707 KAR 1:340 Section 5- 6(3)

34 CFR 300.300 (a) (2)

If the child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if:

- (a) despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);
- (b) the rights of the parent(s) have been terminated by a court of competent jurisdiction; or
- (c) the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

707 KAR 1:340 Section 6 7 (1)

34 CFR 300.300 (a) (2)

SCSD does not require parental consent for initial evaluations for children who are in the custody of the state or who are in foster care when:

- a. despite reasonable efforts, SCSD cannot discover the whereabouts of the parent(s);

- b. the rights of the parent(s) have been terminated by a court of competent jurisdiction, which is on file in the student record; or
- c. SCSD discovers that the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction, SCSD personnel ask the individual appointed by the court to represent the child to give consent for the initial evaluation.

The ARC Chairperson follows procedures for **Representation of Children** in **PROCEDURAL SAFEGUARDS**.

In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parents(s), the LEA shall keep a record of its attempts which may include:

- (a) detailed records of telephone calls made or attempted and the results of those calls;
- (b) copies of correspondence sent to the parents and any responses received; and
- (c) detailed records of the visits made to the parent's home or place of employment and the results of those visits.

707 KAR 1:340 Section 5 6 (4)

707 KAR 1:340 Section 6 7 (4)

34 CFR 300.322 (d)

SCSD personnel keep detailed records including the date, time, and name of the person attempting the contact. The records, copies of any correspondence sent to the parent, and any response received, are filed in the child's special education record.

SCSD conducts ARCs without the parent in attendance if there is documentation that there is a minimum of two (2) attempts to contact the parent).

Consent for Reevaluation

The LEA shall obtain consent before conducting a reevaluation of a child with a disability. If the parent refuses to consent, the LEA may pursue the reevaluation by using the procedures in this administrative regulation for mediation, dispute resolution meeting, or a due process hearing.

707 KAR 1:340 Section 5 6 (6)

34 CFR 300.300 (c) (1)

Parental consent for reevaluation shall not be required if the LEA can demonstrate that:

- (a) it made reasonable efforts to obtain such consent, and followed the procedures in 707 KAR 1:340 Section 5 6 (4) to show those efforts; and
- (b) the parent failed to respond.

707 KAR 1:340 Section 5- 6(7)

34 CFR 300.300 (c) (2)

If the parent does not respond to the consent for proposed reevaluation, the ARC Chairperson makes sure that attempts to obtain the consent are documented. If there are two (2) attempts to obtain the consent for the reevaluation with no success, the ARC Chairperson notifies the evaluation personnel to complete the evaluation.

Consent for Special Education and Related Services

The ARC Chairperson obtains written informed parental consent prior to the time a child receives special education and related services. SCSD uses a Consent for Special Education and Related Services form that includes a place for the date and the parent's signature and states that the parent understands and agrees:

1. to the provision of special education and related services in the least restrictive environment;
2. parental consent is given voluntarily; and
3. the consent statement explains that special education and related services will be provided as described in the IEP and in the placement(s) specified by the ARC in the Conference Summary.

The request for Consent for Special Education and Related Services is accompanied by the Conference Summary.

Once the parent gives consent for a child with a disability to receive special education and related services, SCSD does not require any additional consent from the parent of the child for placement to

continue to receive special education and related services. Additional consent to provide services is not needed, even though the location(s) of the delivery of services may change.

Any changes in the special education program of the child after initial placement are subject to prior notice requirements (ARC Meeting and Conference Summary) but not subject to parental consent.

Denial or Revocation of Parent Consent for Services

If the parent of a child refuses to give consent for the provision of initial specially designed instruction and related services or fails to respond to a request for consent, the LEA shall not provide such services and shall not use a due process hearing or mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.

707 KAR 1:340 Section 5 6 (5)
34 CFR 300.300 (b) (3)

If the parent denies or fails to respond to a request for consent for provision of services, the ARC Chairperson contacts the Director of Special Education regarding the refusal. SCSD does not “override refusal to consent to the initial provision of special education and related services”, therefore, does not request mediation or a due process hearing (see **PROCEDURAL SAFEGUARDS RESOURCES**, Letter to Cox, and Letter to Combs).

If consent is revoked, the Director of Special Education and the building principal make sure that the child remains in the present educational placement during any due process hearings and appeals unless the parent and the ARC agree otherwise (according to **Child Status during Pendency of Judicial Proceedings** in procedures for **PROCEDURAL SAFEGUARDS**).

The LEA shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the LEA decides not to pursue the consent through due process procedures set out in 707 KAR 1:340 Sections 9 and 11, and the LEA shall not be required to convene an ARC meeting or develop an IEP if the parent of the child:

- (a) fails to respond or refuses to consent to a request for evaluation;
- (b) fails to respond or refuses to consent to a request for services; or
- (c) refuses to consent to a reevaluation.

707 KAR 1:340 Section 5 6 (9)
34 CFR 300.300 (b) (3)

Consent for Release of Information for Transition Services

Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 C.F.R. 300.321 (b)(3).

707 KAR 1:320 Section 3 (4)
KRS 160.720 (1)
34 CFR 300.321 (b) (3)
34 CFR 300.622 (b) (2)

SCSD obtains written parental consent before disclosing personally identifiable information to individuals or agencies other than those indicated on the disclosure without consent list. The Consent for Release of Information form (see **CONFIDENTIALITY RESOURCES**) provided by the SCSD is available in the Principal's Office of the school the child attends and in the office of the Director of Special Education. Copies of the completed forms are maintained in the educational records of the specific child.

REPRESENTATION OF CHILDREN

The ARC Chairperson makes sure that each child is represented by verifying the location, legal status and availability of parents or guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child, or the provision of a free appropriate public education (see Representative of the Child or Youth handout in **PROCEDURAL SAFEGUARDS RESOURCES**).

"Parent" means:

- (a) a biological or adoptive parent of a child;
- (b) a guardian generally authorized to act as the child's parent, or authorized to make educational decision for the child, but not the state if the child is a ward of the state;
- (c) a person acting in the place of a biological or adoptive parent such as a grandparent, stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare;
- (d) a foster parent if the biological or adoptive parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an on-going, long-term parental relationship with the child, is willing to make the education decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child;
- (e) a foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or
- (f) a surrogate parent who has been appointed in accordance with 707 KAR 1:340 Section 6.

707 KAR 1:280 Section 1 (43)

34 CFR 300.30

The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 707 KAR 1:280 (43), shall be presumed to be the parent for purposes of 707 KAR Chapter 1 unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in Section 1 (43) (a) through (d) of 707 KAR 1:280 to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

707 KAR 1:340 Section 6 7 (2)

34 CFR 300.300 (a) (2)

Determination of Representative

No later than at the time of referral, the ARC Chairperson, through a review of the records of the child, determines if a child is:

1. emancipated (age 18 or married), and therefore represents him/herself in educational decision-making; or
2. to be represented by an adult, such as a parent, a guardian, a person acting as a parent, a foster parent, or a surrogate parent.

Biological or Adoptive Parents

Either parent, biological or adoptive, has parental rights unless there has been a judicial determination that limits or terminates their rights. Parents are considered available when a current residence or mailing address is identified by the ARC Chairperson.

If no parent is in residence, the ARC Chairperson obtains the name and address of either natural parent, or any documents affecting the parent's legal status regarding educational decision-making including informal arrangements or the result of a State agency or court action.

In the case of divorced parents that have joint legal custody, the ARC Chairperson assumes that if only one parent is present, the parent present has consulted with the parent not present and the input and decisions offered by the parent represent both parents' input. In the case of a divorced parent that has sole legal custody, that parent may make decisions without the other parent present or offering input.

Legal Guardian

If the child is represented by a legal guardian, the ARC Chairperson obtains a copy of the court order determining the legal guardianship. The ARC Chairperson places a copy of the court order in the educational record of the child.

If there is no parent available, and the person caring for the child is doing so as the result of State agency or court action rather than through an informal arrangement that was voluntarily agreed to by the parent, the ARC Chairperson requires this person to provide information regarding the legal status of the rights of the parent with respect to the child. This person does not qualify as the educational representative unless the person is a private individual who can produce a court order that he or she has been granted guardianship of the child. Unless the person can produce a court order that he or she is a private (as opposed to state-appointed) guardian, such a person may not represent the child (e.g., sign permission or other due process forms) and, absent written parental permission, is not allowed access to the educational records of the child.

Person Acting As a Parent

If the ARC Chairperson determines there is no parent available and the person with whom the child resides is a family member, friend, or other person with whom the parent has made an informal arrangement to care for the child without state agency or court intervention, the ARC Chairperson determines this is a person "acting as a parent" and as such has all the rights of a parent until the parent reappears to reclaim his or her rights.

A person "acting as a parent" is a relative of the child or a private individual allowed to act as the parent of a child by the natural parents or guardians. For example, a grandparent, neighbor, governess, friend, or private individual caring for the child with the written approval of the parent or guardian of the child would qualify as a "person acting as a parent".

Commitment to CFC or DJJ when Parental Rights are not Terminated

If the child has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice and parental rights have not been terminated, the ARC Chairperson involves the biological or adoptive parent in education decision-making and no surrogate parent is assigned.

Commitment to CFC or DJJ when Parental Rights are Terminated

"Ward of the state" means a child who has been committed to the Cabinet for Families and Children (CFC) or the Department of Juvenile Justice (DJJ) through a legal process, whether the commitment is voluntary or non-voluntary and the biological or adoptive parents rights have been terminated.

707 KAR 1:280 Section 1 (66)

If the ARC Chairperson determines that the child is a ward of the State (i.e., parental rights have been terminated by the court), the ARC Chairperson immediately contacts the Director of Special Education and obtains a copy of the court order verifying that the child is a ward of the State. The ARC Chairperson files the copy of the court order into the educational record of the child. The Director of Special Education appoints a surrogate parent.

In instances that involve protective custody of the child, CFC may inform the ARC Chairperson that parents must not learn information regarding the whereabouts of their child. In such cases, the ARC Chairperson requires that the CFC representative provide SCSD a court order that prohibits parent involvement with the child. A copy of the order is filed in the child's records, and the Director of Special Education appoints a surrogate because the child's parents are unavailable.

Foster Parent

The ARC Chairperson verifies that the child resides in a foster home or is otherwise in custody of a State agency.

If the child is placed with foster parents, the ARC Chairperson determines if parental rights have been terminated. If parental rights have not been terminated, the ARC Chairperson follows the procedures for **Representation of Children in PROCEDURAL SAFEGUARDS, Biological or Adoptive Parents or Legal Guardian**. If no parent is known, their whereabouts cannot be determined, or parental rights have been terminated, the Director of Special Education may assign the foster parent as a surrogate parent in accordance with procedures.

In the event parent's rights have been terminated, the foster parent may act as parent without the need for appointment as surrogate parent under the following conditions:

1. the foster parent has an on-going, long-term parental relationship with the child;
2. the foster parent is willing to make the educational decisions required of parents under special education regulations; and
3. the foster parent has no interest that would conflict with the interests of the child.

Age of Majority

When a child with a disability reaches the age of majority (age eighteen), all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. An LEA shall notify the child with a disability and the parents of the transfer of the rights.

707 KAR 1:340 Section 6- 7 (11)
34 CFR 300.520 (a)

SCSD personnel assume the youth is considered able to make informed decisions at age eighteen unless the parent provides the school with a court order declaring the student legally incompetent or the student voluntarily agrees to allow the parent to continue to have educational decision making authority.

Surrogate Parent

An LEA shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

- (a) no individual can be identified as a parent as defined in 707 KAR 1:280;
- (b) an LEA, after reasonable efforts, cannot discover the whereabouts of the parent;
- (c) the child is a ward of the state; or
- (d) the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431.

707 KAR 1:340 Section 6 7 (3)
34 CFR 300.515 (a)

An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents

under Part B of IDEA, 34 CFR Part 300, and 707 KAR Chapter 1 to make decisions about educational issues for a child.

707 KAR 1:340 Section 6 7 (5)
34 CFR 300.519 (b)

If the ARC Chairperson determines the child is represented by a parent or legal guardian, no surrogate is needed. The Director of Special Education does not assign a surrogate parent to an emancipated individual.

The ARC Chairperson notifies the Director of Special Education that a surrogate parent may be needed when:

1. no one can be identified who meets the criteria of "parent";
2. a parent is identified but efforts, including registered mail to the last known address, fail to locate the parent; or
3. the child is a ward of the State (i.e., all parental rights have been terminated by a court of competent jurisdiction); or
4. the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act.

The ARC Chairperson contacts an eligible relative to determine if the person is willing to serve as a surrogate if the parent of a child is unavailable to serve as the representative of the child.

If the ARC Chairperson informs the Director of Special Education that there is no caregiver or relative eligible and willing to serve as surrogate, the Director of Special Education selects a surrogate to serve as the educational representative for the child.

Unaccompanied Homeless Youth

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in until a surrogate parent can be appointed that meets all the requirements of 707 KAR 1:340 Section 6- 7.

707 KAR 1:340 Section 6 7 (8)
34 CFR 300.519 (f)

If the student is an unaccompanied homeless youth, the Director of Special Education attempts to identify the student representative according to the **Determination of Representative** in procedures for **PROCEDURAL SAFEGUARDS**.

The ARC Chairperson, in consultation with the Director of Special Education, may assign staff from the emergency or transitional shelters, independent living programs, or outreach programs to act as a *temporary* surrogate parent until the Director of Special Education can arrange for the assignment of a surrogate parent who meets all of the required criteria.

Criteria for Selection of Surrogate Parent Volunteers

An LEA shall have a procedure for selecting surrogates. A surrogate:

- (a) shall not be an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;
- (b) shall not have any personal or professional interest that conflicts with the interests of the child; and
- (c) shall have knowledge and skills that ensure adequate representation of the child.

707 KAR 1:340 Section 6 7 (6)
34 CFR 300.519 (d)

After determining if a child needs a surrogate parent, the Director of Special Education selects surrogate parents based on the following:

1. the person is not an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;
2. the person does not have an interest that conflicts with the interests of the child;
3. the person has knowledge and skills that ensure adequate representation of the child.

A conflict of interest exists when it appears that the person being considered:

1. might benefit personally or professionally from decisions regarding the child; or
2. might be recruited to make decisions which might affect policy in which the person has a personal or professional interest.

A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

707 KAR 1:340 Section 6 7 (7)
34 CFR 300.519 (e)

The Director of Special Education may solicit recommendations from SCSD staff members, the local Association for Retarded Citizens (AIM - Advocacy In Motion), and CFC, and contacts foster parents as appropriate.

The Director of Special Education maintains a list of people who are willing to serve as Surrogate Parents. The Director of Special Education reviews and updates the list annually.

Assignment of Surrogate Parent Volunteers

An LEA shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the LEA that the child needs a surrogate.

707 KAR 1:340 Section 6 7 (9)
34 CFR 300.519 (h)

Not more than thirty (30) days after the determination that a child needs a surrogate parent, the Director of Special Education selects a surrogate parent and asks the surrogate to sign a statement of commitment and acceptance. The commitment reads as follows: "I will:

1. acquaint myself with the child and his or her educational needs;
2. be accessible to the child and school personnel as needed;
3. represent the educational interests of the child to the best of my ability;
4. have no other vested interests that would conflict with my allegiance to the child; and
5. keep confidential the information in the educational records of the child."

Upon receipt of the individual's signed indication of willingness to serve as surrogate, the Director of Special Education enters the name and address of the surrogate in the educational record of the child and informs the ARC Chairperson that a surrogate has been selected.

Surrogate Parent Training

The Director of Special Education provides information to persons selected as surrogate parents to assure these persons have sufficient knowledge and skills to effectively represent the child. The information includes:

1. the role of the surrogate parent;
2. the rights and responsibilities of parents of children with disabilities;
3. available resources for additional information and assistance;

4. procedures to follow to be excused from appointment when there is a possibility of a potential conflict of interest;
5. conditions for termination as a surrogate; and
6. notification that the surrogate has the right to represent the child in all matters related to the educational rights of the child.

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

707 KAR 1:340 Section 6 7 (10)
34 CFR 300.519 (g)

The ARC Chairperson and Director of Special Education make sure that the surrogate parent assigned to a child represents the child in all decision-making processes including, identification, evaluation, placement, and the provision of FAPE.

Termination of a Surrogate Parent Assignment

The Director of Special Education determines the surrogate is no longer needed according to the following criteria:

1. the "parent" becomes known or is located;
2. upon emancipation of the youth;
3. the surrogate no longer meets the qualifications and criteria for being a surrogate parent; or
4. the surrogate is not fulfilling his or her responsibilities.

The Director of Special Education sends written notice to the surrogate informing the surrogate of the termination and indicating the reasons for termination. A copy of the letter is maintained in the files of the Director of Special Education.

STATE COMPLAINT PROCEDURES

A copy of the procedural safeguards (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

- (a) upon initial referral or parent request for evaluation;
- (b) upon receipt of the first state written complaint;
- (c) upon the receipt of the first filing of a due process hearing in a school year;
- (d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
- (e) upon request by a parent.

The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.

707 KAR 1:340 Section 4 5 (1-2)
34 CFR 300.504 (a)

The ARC Chairperson provides a copy of the Parent Procedural Safeguards document at each annual review and:

- (a) upon initial referral or parent request for evaluation;
- (b) upon receipt of the first state written complaint;
- (c) upon the receipt of the first filing of a due process hearing in a school year;
- (d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
- (e) upon request by a parent.

The right to file a complaint with the Kentucky Department of Education and the procedures for filing, including the information required and timelines for resolution are included in the Parent's Rights document and the Kentucky Department of Education Special Education Procedures Manual, November 2000.

Right to File a Complaint

Any organization or individual including someone from outside the state may file a signed written complaint under 707 KAR 1:340 Section 7.

707 KAR 1:340 Section 7 8 (2)
34 CFR 300.153 (a)

(3) The complaint shall include:

- (a) a statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA regulations;
- (b) the facts on which the statement is based;
- (c) a signature and contact information for the complainant;
- (d) name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431;
- (e) name of the school the child is attending;
- (f) a description of the nature of the problem, including facts related to the problem;
- (g) a proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and
- (h) information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

(4) The party filing the complaint shall forward a copy to the LEA.

707 KAR 1:340 Section 7 8 (3-4)
34 CFR 300.153 (b) & (d)

Procedures for Addressing the Complaint

The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 CFR 300.151 through 300.153:

- (a) the Kentucky Department of Education shall have sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;
- (b) the complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;
- (c) the LEA shall have an opportunity to respond to the complaint including, at least:
 - 1. a proposal to resolve the complaint;
 - 2. an opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;
- (d) the department shall review all relevant information; and
- (3) the department shall issue a written decision addressing each allegation in the complaint and containing the findings of fact and conclusions and the reasons for the final decision.

707 KAR 1:340 Section 7 8 (1)
34 CFR 300.153 (a)

The Kentucky Department of Education shall allow an extension of the time limit under 707 KAR 1:340 Section 7 (1) only if exceptional circumstances exist or if the parent and the LEA agree to extend the time line to engage in mediation or other alternative means of dispute resolution..

707 KAR 1:340 Section 7 8 (6)
34 CFR 300.152 (b) (1)

When the Director of Special Education receives written notice from KDE of any complaint filed, the Director of Special Education informs the Superintendent. The Director of Special Education and the Superintendent decide if the district will conduct its own investigation or provide KDE/DECS with the relevant documents and allow KDE/DECS to conduct the investigation.

Right to Appeal Written Decision from KDE/DECS

The complainant, parent or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.

707 KAR 1:340 Section 7 8 (5)

34 CFR 300.660 (a) (1) (ii)

Implementation of Final Decision

The KDE shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:

- (a) technical assistance activities;
- (b) negotiations; or
- (c) corrective actions.

707 KAR 1:340 Section 7 8 (7)

34 CFR 300.152 (b) (2)

MEDIATION PROCESS

An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.

707 KAR 1:340 Section 8 9 (1)

34 CFR 300.506 (a)

The mediation process, if chosen, shall:

- (a) be voluntary;
- (b) not be used to deny or delay a parent's right to a due process hearing under 707 KAR 1:340 Section 8 and Section 11 or 34 CFR Section 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and
- (c) be conducted by a qualified and impartial mediator trained in effective mediation techniques.

707 KAR 1:340 Section 9-10 (1)

34 CFR 300.506 (b) (1)

The Kentucky Department of Education shall maintain a list of qualified mediators who shall:

- (a) not be an employee of: the Kentucky Department of Education or the LEA that is involved in the education or care of the child;
- (b) be chosen at random for the mediation process; and
- (c) not have a personal or professional conflict of interest.

707 KAR 1:340 Section 9- 10 (2)

34 CFR 300.506 (b) (3)

The Kentucky Department of Education shall bear the cost of the mediation process.

707 KAR 1:340 Section 9- 10(3)

34 CFR 300.506 (b) (4)

The sessions in the mediation process shall be:

- (a) scheduled in a timely manner not to exceed sixty (60) days; and
- (b) held at a location that is convenient to both parties to the dispute.

707 KAR 1:340 Section 9 10 (4)

34 CFR 300.506 (b) (5)

In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that:

- (a) sets forth the resolution and a timeline in which it shall be implemented;
- (b) states that all discussions that occurred in the mediation process shall be confidential; and
- (c) may not be used as evidence in any subsequent due process hearing or civil proceeding.

707 KAR 1:340 Section 9 10 (5)

34 CFR 300.506 (b) (6-7)