

SPECIAL EDUCATION POLICIES AND PROCEDURES

Kentucky School for the Blind
Kentucky School for the Deaf



April, 2019

As a condition of funding under the Individuals with Disabilities Education Act (IDEA) local educational agencies are required to establish written policies and procedures for implementing federal special education laws. In addition, Kentucky law requires local educational agencies to establish written policies and procedures for implementing state and federal special education requirements. Special Education Policies and Procedures has been developed to help the Kentucky School for the Blind and the Kentucky School for the Deaf to meet obligations and to establish and implement special education requirements. This document may be used as a reference tool and for staff development activities to promote understanding of and compliance with special education requirements.

These policies and procedures are derived primarily from IDEA requirements and Kentucky special education statutes and regulations.

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Prohibition on Disclosures96

Definitions and Terms

Admissions and Release Committee (ARC) means a group of individuals that is responsible for evaluating the child to determine the child's eligibility or continued eligibility for special education and related services and the educational needs of the child; developing, reviewing, or revising an IEP for the child; and determining the special education placement for the child.

34 CFR Sec. 300.23

707 KAR 1:320

Adverse effect means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

707 KAR 1:002

Aging out means the age of the youth has reached the mandated service age for a free appropriate public education and the school district is no longer required to provide special education and related services to the youth. IDEA defers to state law regarding when a student ages out.

KRS 157.200

Alternative Assessment means an assessment process designed to merge assessment and instruction so that students demonstrate strengths, knowledge, skills, and independence; encourage the student to engage in learning that is meaningful and appropriate; and provide multiple opportunities for measuring significant progress.

Alternative High School Diploma means the diploma of a student with a disability who meets criteria for the alternative assessment system receives upon completion of the program designed by the Admissions and Release Committee.

20 U.S.C. sec. 1414(d)(1)(A)

KRS 158.140

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not mean a medical device that is surgically implanted, or the replacement of such a device.

34 CFR Sec. 300.5

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include:

1. the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. coordinating and using other therapies, interventions, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs;
5. training or technical assistance for a child with a disability or, if appropriate, that child's family; and
6. training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

34 CFR Sec 300.6

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional-behavior disability.

707 KAR 1:002

Behavior Intervention Plan (BIP): A plan included as part of the IEP for a child who has behaviors that impact their learning or that of others. The BIP includes the problem behaviors in need of changing and positive behaviors and strategies to be taught.

Beyond the control of school means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all interventions strategies attempted by the school.

KRS 600.020 (3)

Braille means the system of reading and writing through touch. It refers to the official codes adopted by the Braille Authority of North America (BANA) which includes: Unified English Braille (UEB), Nemeth Code for Mathematics and Science Notation, 1972 Revision and published updates; Music Braille Code, 1997; and The IPA Braille Code, 2008.

Business day means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day.

34 CFR Sec 300.11

707 KAR 1:370 Section 1

Change of placement because of disciplinary removals means a change of placement occurs if:

1. the removal is for more than ten (10) consecutive school days; or
2. the child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:
 - a. the series of removals total more than 10 school days in a school year;
 - b. the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - c. of additional factors, including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Child with a disability means a child, evaluated in accordance with 34 CFR Sec. 300.304 (as detailed in 707 KAR 1:300) as having any of following and needs special education and related services:

1. autism,
2. deaf-blindness,
3. developmental delay,
4. emotional behavior disability,
5. hearing impairment,
6. mental disability,
7. multiple disabilities,
8. orthopedic impairment,
9. other health impairment,
10. specific learning disability,
11. speech or language impairment,
12. traumatic brain injury, or
13. visual impairment.

If it is determined, through an appropriate evaluation that a child has one of the disabilities identified above, but only needs a related service and not special education, the child is not a child with a disability. If the related service required by the child is considered special education by the State, rather than a related service, the child would be determined to be a child with a disability.

34 CFR Sec. 300.8

707 KAR 1:300

Collaboration means, for purposes of determining class size, a teacher of exceptional children works with children with disabilities in the regular classroom to provide specially designed instruction and related services.

707 KAR 1:350

Co-teaching means a service delivery in which the student is served in the regular classroom and a special education teacher and regular education teacher work together to implement the IEP and provide instruction and access to the general education curriculum.

Complaint means an allegation that a local educational agency (LEA) has violated the Individuals with Disabilities Education Act (IDEA) or an implementing administrative regulation, and the facts on which the statement is based.

Compliance means the obligations of state or federal requirements are met.

Consent means:

1. A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication;
2. A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom;
3. A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive.

34 CFR Sec. 300.9

Controlled substance means a drug or other substance identified under 21 U.S.C. Section 812 (c).

34 CFR Sec. 300.530(i)(1)

Core academic subjects means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.

34 CFR Sec. 300.10

Day means calendar day unless otherwise indicated as business day or school day.

34 CFR Sec. 300.11

Deaf-Blindness concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

34 CFR § 300.8

Destruction of Educational Records means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

34 CFR § 300.611(a)

Developmental Delay (DD) means children aged three through nine who is experiencing developmental delays as defined by the State and as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Physical development, cognitive development, communication development, social or

emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.
34 CFR §300.8(b)

Director means the Director of Special Education Services in a local education agency or a local school.

Dispute Resolution means procedures including mediation procedures, State complaint procedures, and due process procedures for resolving disputes between parents and public agencies, which can be used in a manner consistent with our shared goals of improving results and achieving better outcomes for children with disabilities.

34 CFR §§300.151-300.153

34 CFR §300.506

34 CFR §§300.507-300.516 and 300.532-300.533

Educational Performance means a child's abilities in academic and non-academic areas. Academic areas may include reading, math, communication, progress in meeting goals in the general curriculum, and performance on state-wide tests. Non-academic areas may include daily living skills, behavior, social skills, mobility and mental health.

Education Records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232 g, means those records that are directly related to a student and maintained by an educational agency or institution.

34 CFR § 300.611(b)

Emancipated Student means a student who has reached the age of 18, declared emancipated by the court or is a married under the age of 18. Students who are emancipated represent themselves in the educational decision-making process, unless they have been declared legally incompetent pursuant to KRS Chapter 387. If a child has been declared legally incompetent, a local educational agency obtains an official copy of the court order appointing a legal guardian.

KRS 159.010

Emotional-behavioral disability (EBD) means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

1. severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;
2. severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;
3. a general pervasive mood of unhappiness or depression; or
4. a tendency to develop physical symptoms or fears associated with personal or school problems. This term does not apply to children who display isolated (not necessarily one) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

Equipment means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents; and other related materials.

CFR Sec. 300.14

Evaluation means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

34 CFR § 300.15

Extended school year services means specially designed instruction and related services that are provided to a child with a disability beyond the normal school year in accordance with the child's IEP at no cost to the parents.

30 CFR Sec. 300.106(b)

Formal Written Complaint means a written statement alleging that a school district has violated a requirement of state or federal special education law.

Free appropriate public education (FAPE) means special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge;
2. meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 and the Program of Studies, 704 KAR 3:303, as appropriate;
3. include preschool, elementary school, or secondary school education in the state; and
4. are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

30 CFR § 300.17

707 KAR 1:

704 KAR 3:303

Full and individual evaluation means the collection, analysis, interpretation, and documentation of a variety of evaluation data sources related to the suspected disability, administered selectively with the individual child or youth, which is used by an Admissions and Release Committee (ARC) to determine eligibility and plan an appropriate individual education program. The ARC does not use the results from group-administered tests or procedures for determining the presence of a disability.

Functional means activities and skills that are not considered academic or related to a child's academic achievement as measured on statewide assessments.

703 KAR Chapter 5.

Functional Behavior Assessment (FBA) means a process of collecting information concerning problem behaviors so that positive behavioral supports and interventions can be developed. It involves gathering information to help determine what purpose the problem behavior serves.

General education interventions or early childhood screenings may include records of academic and behavioral interventions attempted and data collected during planning, implementing, monitoring and evaluating the child's response to interventions. For preschool children, this also includes records of screening activities, vision and hearing screening, and results of other assessments.

General curriculum means the same curriculum as for nondisabled children.

34 CFR Sec. 300.320(a)(1)(i)

Graduates means a child completes the established program of study leading to the receipt of a regular diploma and leaves the school system. The Board of Education grants a youth with a disability a regular diploma who has met the State Board of Education criteria standards.

Hearing impairment sometimes referred to as "Deaf" or "hard of hearing", means a hearing loss that:

1. 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. results in difficulty identifying linguistic information through hearing; and,
 3. has an adverse effect on the child's educational performance.

Homeless Children The term 'homeless children' has the meaning given the term homeless children and youths in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a) as amended, 42 U.S.C. 11431 et seq.)
34 CFR Sec. 300.19

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

IDEA means the Individuals with Disabilities Education 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.
34 CFR Sec. 300.502

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.
34 CFR Secs. 330.320 through 300.324

Interim Alternate Educational Setting (IAES) means any placement setting that is identified as a unilateral disciplinary response to weapons, drugs, violations or any setting approved by a hearing officer, principal or administrator, or a judge when a situation of substantial injury is at issue. The student with a disability who violates a code of student conduct shall not remain in the appropriate interim alternative educational setting, another setting, or suspension, for more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.
34 CFR Sec. 300.536

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 or agency appointed by the District Court to have care, custody, and control of a minor or an adult who has been declared incompetent pursuant to KRS Chapter 387.

Limited English Proficiency has the meaning given the term in section 9101 (25) of the Elementary and Secondary Education Act (ESEA).

Local educational agency (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 (which includes the Kentucky School for the Blind (KSB) and the Kentucky School for the Deaf (KSD).

34 CFR Sec. 303.23

707 KAR 1:002

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;
 - c. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
 - d. manifestation is typically during the developmental period; or
2. a functional mental disability (FMD) in which:
 - i. cognitive functioning is at least three (3) or more standard deviations below the mean;
 - ii. adaptive behavior deficits are at least three (3) or more standard deviations below the mean;
 - iii. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
 - iv. manifestation is typically during the developmental period.

707 KAR 1:002

Multiple disabilities (MD) means concomitant impairments that have an adverse effect on the child's educational performance, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one of the impairments. Examples of MD include mental disability-blindness, and mental disability-orthopedic impairment. Multiple disabilities does not mean deaf-blindness nor does it mean a speech or language impairment in combination with another category of disability.

"A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition."

KRS 157.200 (1)(h)

Native language means, if used in reference to an individual of limited English proficiency, the following:

1. the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;
2. in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or
3. for an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual such as sign language, Braille, or oral communication.

34 CFR Sec. 300.29

Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities and employment by the public agency and assistance in making outside employment available.

34 CFR § 300.107

Observations include structured behavioral observations, rating scales, ecological instruments, behavioral interventions, functional analysis of behavior and instruction, anecdotal, and other observations (conducted by parents, teachers, related services personnel, and others).

Orthopedic impairment or OI means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes an impairment caused by a congenital anomaly such as clubfoot, absence of some member, etc., an impairment caused by disease such as poliomyelitis, bone tuberculosis, etc., and an impairment from other causes such as cerebral palsy, amputations, and fractures or burns that causes contractures.

"Orthopedic impairment means a severe physical impairment of bone or muscle which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes."

KRS 157.200 (1) (a)

Other health impairment (OHI) means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

1. is due to a chronic or acute health problem such as acquired immune deficiency syndrome, asthma, attention deficit disorder, or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, or tuberculosis; and
2. adversely affects a child's educational performance.

Parent means:

1. a biological or adoptive parent of a child;
2. 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;
3. a person acting in the place of a biological or adoptive parent such as a grandparent or stepparent or other relative with whom the child lives, or a person who is legally responsible for the child's welfare;
4. 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
5. a surrogate parent who has been appointed in accordance with 707 KAR 1:360, Section 6.

34 CFR Sec. 300.30

"Parent" does not include any person whose parental rights have been terminated; the state, county, or a child welfare agency if a child was made a ward of the state, county, or child welfare agency under ch. 54 or 880 or if a child has been placed in the legal custody or guardianship of the state, county, or a child welfare agency under ch. 48 or ch. 767; or an American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency.

34 CFR Sec. 300.30

Participating agency means any agency or institution that collects, maintains or uses personally-identifiable information, or from which information is obtained, under the Individuals with Disabilities Education Act.

34 CFR Sec. 300.611(c)

Personally identifiable means information that includes the name of the child, the child's parent or other family member; the address of the child; a personal identifier such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

34 CFR Sec. 300.32

Postsecondary goals means those goals that a student hopes to achieve after leaving high school.

Parentally-placed Private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities, including religious schools or facilities that meet the definition of elementary school or secondary school, other than children with disabilities placed or referred to private schools by public agencies.

34 CFR Sec. 300.130

Public expense means that the LEA either pays for the full cost of the services to meet the requirements of 707 KAR Chapter 1 or ensures that the services are otherwise provided at no cost to the parent. Nothing in these regulations shall relieve an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

Related services means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

“Related services” does not include a medical device that is surgically implanted, the optimization of that device’s functioning maintenance of that device, or the replacement of that device.

The definition of “related services” does not:

1. limit the rights of a child with a surgically implanted device to receive related services as determined by the ARC to be necessary.
2. limit the responsibility of the LEA to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child while the child is transported to and from school or is at school;
3. prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly; or
4. limit the right of a child with a surgically implanted device to receive related services that are determined by the ARC to be necessary for the child to receive FAPE

Within this definition:

"Audiology" includes:

- identification of children with hearing loss;
- determination of the range, nature, and degree of hearing loss including referral for medical or other professional attention for the habilitation of hearing;
- provision of activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation and speech conservation;
- creation and administration of programs for prevention of hearing loss;
- counseling and guidance of pupils, parents and teachers regarding hearing loss; and
- determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.

"Counseling services" means services provided by qualified social workers, psychologists, guidance counselors or other qualified personnel.

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

"Interpreting services," as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, and special interpreting services for children who are deaf-blind.

"Medical services" means services provided by a licensed physician to determine a child's medically-related disability that results in the child's need for special education and related services.

"Occupational therapy" means services provided by a qualified occupational therapist, and includes:

- improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
- improving ability to perform tasks for independent functioning if functions are impaired or lost; and
- preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching students the following as appropriate:

- spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street);
- to use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
- to understand and use remaining vision and distance low vision aids, as appropriate; and
- other concepts, techniques, and tools.

"Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

"Physical therapy" means services provided by a qualified physical therapist.

"Psychological services" includes:

- administering psychological and educational tests, and other assessment procedures;
- interpreting assessment results;
- obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observations, and behavioral evaluations;
- planning and managing a program of psychological services, including psychological counseling for children and parents; and
- assisting in developing positive behavioral intervention strategies.

"Recreation" includes:

- assessment of leisure function;
- therapeutic recreation services;
- recreation programs in schools and community agencies; and
- leisure education.

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

"School health services" means health services provided by a qualified school nurse or other qualified person that are designed to enable a child with a disability to receive FAPE as described in the child's IEP.

"School nurse services" mean health services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child's IEP.

"Social work services in schools" includes:

- preparing a social or developmental history on a child with a disability;
- group and individual counseling with the child and family;
- working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- assisting in developing positive behavioral intervention strategies.

"Speech-language pathology services" include:

- identification of children with speech or language impairments;
- diagnosis and appraisal of specific speech or language impairments;
- referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- provision of speech and language services for the habilitation or prevention of communicative impairments; and
- counseling and guidance of parents, children, and teachers regarding speech and language impairments.

"Transportation" includes:

- travel to and from school and between schools;
- travel in and around school buildings; and
- specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

34 CFR Sec. 300.34

Resource class means a special education class established to serve only children and youth with disabilities who need specially designed instruction on a part time basis, provided individually or in small groups, which cannot be provided in a regular education class.

Record Review includes a review of information provided by the parents, current classroom-based assessments, information from Infant-Toddler service providers, health/medical records, records from previous evaluations, vision and hearing screening and evaluation results, reports from other agencies, portfolios, cumulative file information, curriculum guides, and other records.

Release or Exit means a child with a disability no longer needs special education and related services and ARC releases the child from services.

School day means any day, including a partial day that children are in attendance at school for instructional purposes. School day means the same thing for all children in school, including children with or without disabilities.

34 CFR Sec. 300.11

Scientifically Based Research means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that:

1. employs systematic, empirical methods that draw on observation or experiment;
2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

20 U.S.C. 9101 (37)

34 CFR Sec. 300.35

Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

34 CFR Sec. 300.530(i)(3)

Services plan means a written statement that describes the special education or related services that the LEA will provide to a parentally-placed child with a disability enrolled in a private school in the district who has been designated to receive services, including the location of the services and any transportation necessary.

34 CFR Sec. 300.37

707 KAR 1:370.

Special class means a special education class established to serve only children and youth with disabilities who need a comprehensive, self-contained, specially designed instructional program in a highly structured environment for the majority of or the entire school day.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

34 CFR Sec. 300.39

Specially-designed instruction means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies.

34 CFR Sec. 300.39

704 KAR 3:303.

Specific learning disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

34 CFR Sec. 300.8

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.

34 CFR § 300.42, 115.76(16)
707 KAR 1:350.

Transfer means the child leaves a particular school district's programs and enrolls in another educational program. Transfer procedures for a child with a disability are the same as those for a child without a disability.

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

1. 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:
 - a. postsecondary education
 - b. vocational training,
 - c. integrated employment (including supported employment),
 - d. continuing and adult education,
 - e. adult services,
 - f. independent living, or
 - g. community participation;
2. based on the individual student's needs, taking into account the child's preferences and interests; and 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.

34 CFR Sec. 300.43

Traumatic brain injury (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; 1
12. information processing; and
13. speech.

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

1. requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration;
2. has an adverse effect on the child's educational performance; and (c) meets the following:
 - a. the child has a visual acuity with prescribed lenses that is 20/70 or worse in the better eye; or
 - b. the child has a visual acuity that is better than 20/70 and the child has one (1) of the following conditions:

- I. a medically diagnosed progressive loss of vision;
- II. a visual field of 20 degrees or worse;
- III. a medically diagnosed condition of cortical blindness; or
- IV. a functional vision loss.

Visually disabled means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils.”

KRS 157.200 (1) (j)

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.”

34 CFR § 300.530(i)(4)

Withdrawal means that a youth leaves the educational system prior to completing the prescribed course of study. Withdraw procedures are the same for a youth with a disability as those for a youth without a disability.

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.

Withholding means no further payment of specified funds is made to an approved recipient.

Full Educational Opportunity Goal

It is the goal of the Kentucky Department of Education to have in effect policies and procedures to demonstrate that both KSB and KSD have established a goal of providing a full educational opportunity to all students with disabilities. Local education agencies are required to have available to all of its students with disabilities the variety of educational programs and services available to nondisabled children, including: art, music, industrial arts, consumer and homemaking education, and vocational education or any program or activity in which nondisabled children participate. The local educational agency provides supplementary aids and services determined appropriate and necessary by the child's ARC, to ensure that students with disabilities have an equal opportunity to participate in nonacademic and extracurricular services and activities.

34 CFR Sec. 300.109

Free Appropriate Public Education

All children with disabilities for whom the local educational agency is responsible are provided a free appropriate public education. Special education and related services are provided to these children with disabilities, including, as required by 34 CFR § 300.530(d), children with disabilities who have been suspended or expelled from school. Children with disabilities entitled to a free appropriate public education are children age three, but not yet 21 who have not graduated from high school with a regular high school diploma and, for the duration of a school term, persons who become 21 years old during that school term and who have not graduated from high school with a regular diploma. A regular high school diploma does not include an alternative diploma that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED). The special education and related services provided to children addresses all of their special education and related services needs and are provided by personnel qualified as required by 34 CFR Sec. 300.156.

34 CFR Sec. 300.101 (a)

34 CFR Sec. 300.102(a)(3)(iv)

34 CFR Sec. 300.156

707 KAR 1:290 Section 1 (1)

KRS 158.150 (7)(c)

The local educational agency provides prior written notice of a change in placement consistent with the requirements in the law when a child with a disability graduates from high school with a regular diploma. Additionally, for those students who graduate from high school with a regular diploma as well as students who exceed the age of eligibility, the local educational agency provides a summary of their academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals.

34 CFR Sec. 300.102(a)(3)(iii)

34 CFR Sec. 300.305(e)(3)

1. Who Is Entitled to FAPE?

All qualified persons with disabilities within the jurisdiction of a school district are entitled to a free appropriate public education. The Section 504 regulation defines a person with a disability as "any person who:

1. has a physical or mental impairment which substantially limits one or more major life activities,
2. has a record of such an impairment, or
3. is regarded as having such an impairment."

For elementary and secondary education programs, a qualified person with a disability is a person with a disability who is:

1. of an age during which it is mandatory under state law to provide such services to persons with disabilities;
2. of an age during which persons without disabilities are provided such services; or
3. entitled to receive a free appropriate public education under the Individuals with Disabilities Education Act (IDEA). (IDEA is discussed later in the pamphlet.)

In general, all school-age children who are individuals with disabilities as defined by Section 504 and IDEA are entitled to FAPE.

2. How Is an Appropriate Education Defined?

An appropriate education may comprise education in regular classes, education in regular classes with the use of related aids and services, or special education and related services in separate classrooms for all or portions of the school day. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions, and may be accompanied by related services such as speech therapy, occupational and physical therapy, psychological counseling, and medical diagnostic services necessary to the child's education.

An appropriate education will include:

1. education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met;
2. the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;
3. evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services; and
4. establishment of due process procedures that enable parents and guardians to:
 - a. receive required notices;
 - b. review their child's records; and
 - c. challenge identification, evaluation and placement decisions.

Due process procedures must also provide for an impartial hearing with the opportunity for participation by parents and representation by counsel, and a review procedure.

3. Education Services Must Meet Individual Needs

To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met. An appropriate education may include regular or special education and related aids and services to accommodate the unique needs of individuals with disabilities.

One way to ensure that programs meet individual needs is through the development of an individualized education program (IEP) for each student with a disability. IEPs are required for students participating in the special education programs of recipients of funding under the IDEA.

The quality of education services provided to students with disabilities must equal the quality of services provided to nondisabled students. Teachers of students with disabilities must be trained in the instruction of individuals with disabilities. Facilities must be comparable, and appropriate materials and equipment must be available.

Students with disabilities may not be excluded from participating in nonacademic services and extracurricular activities on the basis of disability. Persons with disabilities must be provided an opportunity to participate in nonacademic services that is equal to that provided to persons without disabilities. These services may include physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, and referrals to agencies that provide assistance to persons with disabilities and employment of students.

4. Students with Disabilities Must Be Educated with Nondisabled Students

Students with disabilities and students without disabilities must be placed in the same setting, to the maximum extent appropriate to the education needs of the students with disabilities. A recipient of federal funds must place a person with a disability in the regular education environment, unless it is demonstrated by the recipient that the student's needs cannot be met satisfactorily with the use of supplementary aids and services. Students with disabilities must participate with nondisabled students in both academic and nonacademic services, including meals, recess, and physical education, to the maximum extent appropriate to their individual needs.

As necessary, specific related aids and services must be provided for students with disabilities to ensure an appropriate education setting. Supplementary aids may include interpreters for students who are deaf, readers for students who are blind, and door-to-door transportation for students with mobility impairments.

A recipient of federal funds that places an individual with disabilities in another school is responsible for taking into account the proximity of the other school to the student's home. If a recipient operates a facility for persons with disabilities, the facility and associated activities must be comparable to other facilities, services, and activities of the recipient.

5. Evaluation and Placement Decisions Must Be Made in Accord with Appropriate Procedures

Failure to provide persons with disabilities with an appropriate education frequently occurs as a result of misclassification and inappropriate placement. It is illegal to base individual placement decisions on presumptions and stereotypes regarding persons with disabilities or on classes of such persons. For example, it would be a violation of the law for a recipient to adopt a policy that every student who is hearing impaired, regardless of the severity of the child's disability, must be placed in a state school for the deaf.

Section 504 requires the use of evaluation and placement procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

A school district must conduct or arrange for an individual evaluation at no cost to the parents before any action is taken with respect to the initial placement of a child who has a disability, or before any significant change in that placement.

Recipients of federal funds must establish standards and procedures for initial and continuing evaluations and placement decisions regarding persons who, because of a disability, need or are believed to need special education or related services.

These procedures must ensure that tests and other evaluation materials:

1. have been validated for the specific purpose for which they are used, and are administered by trained personnel in conformance with the instructions provided by their producer;
2. are tailored to assess specific areas of education need and are not designed merely to provide a single general intelligence quotient; and
3. are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Recipients must draw upon a variety of sources in the evaluation and placement process so that the possibility of error is minimized. All significant factors related to the learning process must be considered.

These sources and factors include, for example, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

Information from all sources must be documented and considered by a group of knowledgeable persons, and procedures must ensure that the student is placed with nondisabled students to the greatest extent appropriate.

6. Recipients Must Have Due Process Procedures for the Review of Identification, Evaluation, and Placement Decisions

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

Parents must be told about these procedures. In addition, parents or guardians must be notified of any evaluation or placement actions, and must be allowed to examine the student's records. The due process procedures must

allow the parents or guardians of students in elementary and secondary schools to challenge evaluation and placement procedures and decisions.

If parents or guardians disagree with the school's decisions, they must be afforded an impartial hearing, with an opportunity for their participation and for representation by counsel. A review procedure also must be available to parents or guardians who disagree with the hearing decision.

7. How Is A Free Education Defined?

Recipients operating federally funded programs must provide education and related services free of charge to students with disabilities and their parents or guardians. Provision of a free education is the provision of education and related services without cost to the person with a disability or his or her parents or guardians, except for fees equally imposed on nondisabled persons or their parents or guardians.

If a recipient is unable to provide a free appropriate public education itself, the recipient may place a person with a disability in, or refer such person to, a program other than the one it operates.

However, the recipient remains responsible for ensuring that the education offered is an appropriate education, as defined in the law, and for coverage of financial obligations associated with the placement.

The cost of the program may include tuition and other related services, such as room and board, psychological and medical services necessary for diagnostic and evaluative purposes, and adequate transportation. Funds available from any public or private source, including insurers, may be used by the recipient to meet the requirements of FAPE.

If a student is placed in a private school because a school district cannot provide an appropriate program, the financial obligations for this placement are the responsibility of the school district. However, if a school district makes available a free appropriate public education and the student's parents or guardian choose to place the child in a private school, the school district is not required to pay for the student's education in the private school. If a recipient school district places a student with a disability in a program that requires the student to be away from home, the recipient is responsible for the cost of room and board and nonmedical care.

To meet the requirements of FAPE, a recipient may place a student with a disability in, or refer such student to, a program not operated by the recipient. When this occurs, the recipient must ensure that adequate transportation is provided to and from the program at no greater personal or family cost than would be incurred if the student with a disability were placed in the recipient's program.

8. FAPE Provisions in the Individuals with Disabilities Education Act (IDEA)

Part B of IDEA requires participating states to ensure that a free appropriate public education (FAPE) is made available to eligible children with disabilities in mandatory age ranges residing in the state. To be eligible, a child must be evaluated as having one or more of the disabilities listed in IDEA and determined to be in need of special education and related services. Evaluations must be conducted according to prescribed procedures. The disabilities specified in IDEA and Kentucky Administrative Regulation.

The requirements for FAPE under IDEA are more detailed than those under Section 504. In specific instances detailed in the Section 504 regulation (for example, with respect to reevaluation procedures and the provision of an appropriate education), meeting the requirements of IDEA is one means of meeting the requirements of the Section 504 regulation.

IDEA requirements apply to states receiving financial assistance under IDEA. States must ensure that their political subdivisions that are responsible for providing or paying for the education of children with disabilities meet IDEA requirements. All states receive IDEA funds. Section 504 applies to any program or activity receiving ED financial assistance.

9. Public Information

The local educational agency regularly publicizes information about its special education procedures and services. Further, the local educational agency makes available to any person, upon request, all documents relating to the local educational agency's eligibility for state and federal special education funds.
34 CFR Sec. 300.212

If a local educational agency receives a notice from the Department of Education Office of Special Education and Early Learning that it is in noncompliance with respect to state or federal special education law and the Office of Special Education and Early Learning is proposing to reduce or withhold any further payments to the local educational agency until satisfied that the local educational agency is complying with that requirement, the local educational agency gives public notice of the pending state actions.
34 CFR Sec. 300.222(b)

Chapter 1 Child Find System

A. CHILD FIND REQUIREMENTS

General

The local educational agency identifies, locates, and evaluates all children with disabilities, regardless of the severity of their disability, who are in need of special education and related services, including children attending private schools, children who are made a ward of the state, county, or child welfare agency under chapter 54 or 880, children who are not yet three years of age, highly mobile children such as migrant and homeless children, and children who are suspected of being a child with a disability even though they are advancing from grade to grade.

34 CFR Sec. 300.111 (a) (i) & (c)

707 KAR 1:300 Section 1 (1-3)

Transition from Early Intervention Programs

For preschool age children with disabilities, the local educational agency will participate in transition planning conferences for children with disabilities served by early intervention programs to ensure a smooth and effective transition from the early intervention program to preschool.

34 CFR 300.111 (a) (i) & (c)

707 KAR 1:300 Sec. 1 (1-3)

Availability of Child Find

A local educational agency's Child Find System is available throughout the calendar year during the normal business day. The local educational agency informs all involved personnel of due process and confidentiality procedures and requirements.

B. LOCATION ACTIVITIES

Community and Parental Involvement

A local educational agency involves parents and the community in the Child Find System by actively seeking and locating children who may have disabilities by:

1. conducting awareness activities for the general public and local educational agency personnel to notify them of the need to find children with disabilities who need special education and related services;
2. contacting private (including home schools) and parochial schools and other programs and agencies providing services to children to notify them of the availability of special education and related services and methods of referral; and
3. conducting screening activities to identify any child who may need further evaluation to determine if the child has a disability and needs special education and related services.

Public Notice

1. The SEA must give notice that is adequate to fully inform parents about the requirements of Sec. 300.123 including:
 - a. a description of the extent that the notice is given in the native languages of the various population groups in the state;
 - b. a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - c. a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - d. a description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. part 99.

2. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

34 CFR 300.612

3. The Director will send public notice and information to a variety of locations to reach parents who are non-readers, without access to mass media (newspaper, radio, internet, and TV), without children in school, homeless, or not primarily English speaking.

4. The Director will collect information about families residing in local educational agency boundaries who are non-English speaking. If a need to interpret or publish the notice in a language other than English is identified, the notice will be interpreted or translated and published in the other language, to the extent feasible. The local educational agency will attempt to identify a translator by contacting KDE and surrounding colleges and universities, or by contacting KDE, in writing, for request assistance in securing the interpretation or translation.

Training and Awareness

Annually, the Director or designee will train or update the local educational agency administrative personnel concerning procedures for due process, confidentiality, and referral of children who may have disabilities and need special education and related services. Principals or their designees will provide training for their respective staffs within 30 calendar days of the start of school. Principals or their designees keep copies of sign in sheets and agendas.

C. CHILD FIND ACTIVITIES IN PRIVATE SCHOOLS

Evaluation and Implementation Timeline

Within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child, a local educational agency will ensure that:

1. the child is evaluated, and
2. if the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.

34 CFR 300.301 (c) (1) (i)

707 KAR1:320 Section 2 (2)

ARC Meeting Timeline

Within the sixty (60) school-day period referenced in paragraph 1, the local educational agency will hold an ARC meeting to develop an IEP for the child within thirty (30) days of the determination that the child is eligible.

34 CFR 300.323 (c) (1)

707 KAR1:320 Section 2 (3)

Exception to the Timelines

The sixty (60) school-day timeline in paragraph 1 shall not apply in the following situations:

1. if the child moves into the local educational agency district after consent for the initial evaluation is given but before the evaluation can be completed, as long as the local educational agency is making sufficient progress to complete the evaluation and the parent and the local educational agency agree to a specific time when the evaluation will be completed; or
2. if the parent repeatedly fails or refuses to produce the child for evaluation.

34 CFR 300.301 (d) (1) & (e)

707 KAR1:320 Section 2 (5)

Chapter 2 – ADMISSION and RELEASE COMMITTEE (ARC)

A. Membership

The local educational agency will establish an Admission and Release Committee (ARC) with appropriate membership to address the process of identification, evaluation, placement of students, and the provision of a free appropriate public education for students with disabilities.

34 CFR 300.321 (a).

707 KAR 1:320 Section 3 (1)

The ARC for each child with a disability will include:

1. **PARENTS:** The parents of the child will have the opportunity to participate in discussions about the need for special education, related services, and supplementary aids and services; decide with the ARC how their child will be involved in and progress through the general curriculum, and participate in State and district-wide assessments. The ARC considers the concerns of parents and the information provided regarding their child in developing and reviewing the child's IEP.

34 CFR 300.501 (a)

KAR 1:340 Section 1 (1)

2. **REGULAR EDUCATION TEACHER:** Not less than one (1) regular education teacher of the child if the child is or may be participating in the regular education environment to provide information about the general education curriculum for same aged peers.

707 KAR 1:320 Section 3

3. **SPECIAL EDUCATION TEACHER:** Not less than one (1) special education teacher of the child or a special education teacher who has knowledge of the disability or suspected disability, or, if appropriate, at least one special education provider of the child.

707 KAR 1:320 Section 3

4. **ARC CHAIRPERSON:** A representative of KSB or KSD who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the local educational agency. The building principal is the assigned local educational agency representative. The principal may designate another individual to serve as ARC Chairperson by notifying the Director of the designee and his or her qualifications to serve as ARC Chairperson. The Director sends a list of approved designees to the Superintendent in order to obtain local educational agency Board of Education approval.

707 KAR 1:320 Section 3

5. **INTERPRETER OF EVALUATION RESULTS:** An individual who can interpret the instructional implications of evaluation results, who may also be the regular education teacher, special education teacher, or ARC chairperson referenced in subparagraphs (b.) through (d.).

707 KAR 1:320 Section 3

6. **OTHERS INVITED BY PARENT or the Local Educational Agency:** An individual who has knowledge or special expertise regarding the child, at the discretion of the parent or the local educational agency.

707 KAR 1:320 Section 3

7. **RELATED SERVICES PROVIDERS:** Related services personnel, as appropriate.

707 KAR 1:320 Section 3

8. **THE CHILD:** The child, if appropriate.

707 KAR 1:320 Section 3

9. **PROFESSIONALS REQUIRED WHEN A CHILD IS SUSPECTED OF A SPECIFIC LEARNING DISABILITY.**

10. **AGENCY REPRESENTATIVES INVOLVED IN TRANSITION PLANNING.**

707 KAR 1:320 Section 4

11. **EARLY INTERVENTION REPRESENTATIVES.** If the purpose of the ARC is to discuss transition from the early intervention program into the preschool program, a representative of the early intervention program shall be invited to the initial transition ARC meeting if the parent requests. The Individualized Family Service Plan that was used by the early intervention program shall be considered when developing the new IEP for the child.

34 CFR 300.321 (f)

707 KAR 1:320 Section 3 (6)

Selection of Special Education Teacher

The ARC Chairperson selects a special education teacher for the ARC for each child according to the purpose of the meeting, taking into consideration:

1. the qualifications of the teacher and the knowledge of the identified disability or suspected disability supported in the initial referral for possible special education and related services;
2. whether the special education teacher currently works with the child receiving special education and related services; and
3. whether the special education teacher may serve the child who is moving from one educational setting to another.

The Special Education Teacher:

1. assists in conducting necessary evaluations of referred child;
2. brings to the meeting statements of levels of educational performance, proposed goals, objectives/benchmarks, and specially designed instruction for the child;
3. monitors the implementation of the IEP of children included on his/her caseload including the compilation of written documentation of child's progress and accomplishment of goals, objectives/benchmarks;
4. communicates with IEP implementers, makes the IEP accessible to implementers, and advises them regarding their specific responsibilities in implementation of the IEP.

Selection of Regular Education Teacher

A regular education teacher of the child shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate:

1. positive behavioral interventions and strategies for the child;
2. supplementary aids and services; and
3. program modifications or supports for school personnel that will be provided for the child.

34 CFR 300.324 (a) (3)

707 KAR 1:320 Section 5 (5)

The ARC Chairperson selects a regular education teacher to serve on the ARC for each child according to the purpose of the meeting, taking into consideration whether the teacher: currently teaches the child; initiated the referral; can appropriately address the performance of the child in the general education program; or will teach a child who is transitioning from one educational setting or program to another.

Where instruction is provided by more than one regular education teacher, local educational agency requires only one of the teachers to attend the ARC meeting. The regular education teacher who is, or may be, responsible for implementing the IEP should attend the meeting. If the child has more than one regular education teacher responsible for implementing a portion of the IEP, the ARC Chairperson may designate

which teacher or teachers will serve, taking into account the best interest of the child. Although not all the child's teachers may attend the ARC, the ARC Chairperson ensures each teacher is informed about the IEP prior to implementation.

If the child does not have a regular education teacher, the ARC Chairperson selects a regular classroom teacher qualified to teach a child of his or her age. For a child of less than school age, the ARC selects an individual qualified to teach a child of his or her age.

The regular education teacher:

1. brings to the meeting statements of levels of educational performance as related to the Program of Studies and Core Content for Assessment;
2. implements the IEP as appropriate; and
3. provides input on child's progress (maintaining monitoring data if appropriate) and the development and revision of the IEP.

Person who can Interpret Instructional Implications of Evaluation.

The ARC Chairperson arranges for a member of the multidisciplinary evaluation team, or other knowledgeable person who can interpret the instructional results of the evaluation to:

1. provide information regarding needed areas of assessment;
2. assist in explaining assessment procedures;
3. interpret the instructional implications of evaluation results;
4. assist in applying eligibility criteria for a given area of disability; and
5. provide input into the development and implementation of the IEP.

Related Services Personnel

Related service personnel may include, but are not limited to speech and language pathologists, physical or occupational therapists, orientation and mobility specialist, counselors or psychologists, or bus drivers. If the child's evaluation indicates the need for a specific related service, or a child has been receiving a related service, the ARC Chairperson ensures that a qualified provider of that service attends the ARC meeting, or provides a written recommendation concerning service to be provided as related to goals, benchmarks/objectives, and specially designed instruction according to IEP procedures.

Child with a Disability

A child with a disability shall be invited when determined to be appropriate by the ARC and in the circumstances:

1. **CHILD AGE FOURTEEN (14) YEARS OR OLDER:** The ARC Chairperson will invite a student who is in the eighth (8th) grade, or who is fourteen (14) years of age or older, to participate in the ARC meeting if a purpose of the meeting is the consideration of transition service needs. The invitation shall state that the purpose of the meeting will be the development of transition service needs and that the student is invited. This subsection may apply to students younger than 14 years of age if the ARC determines it is appropriate.

34 CFR 300.321 (b) (1)

707 KAR 1:320 Section 3 (4), Section 4 (3-4)

2. **CHILD AGE SIXTEEN (16) OR IEP IN EFFECT WHEN THE CHILD TURNS 16:**

- a. For a child with a disability, beginning no later than the IEP that will be in effect when the child turns sixteen (16) years of age, the invitation shall state that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the child and shall include the identity of any other agency that is invited to send a representative. This shall apply to a child younger than sixteen (16) year of age if determined to be appropriate by the ARC.

34 CFR 300.321 (b) (2)

707 KAR 1:320 Section 4 (4)

b. If a child elects not to attend the ARC meeting, or parents prefer that the child not attend the meeting, where post-school transition services are discussed, the child's teacher takes steps to ensure that the youth's preferences and interests are considered. This information may be gained from an interview with the student and from vocational assessments completed on the student according to IEP Procedures.

3. **CHILD AGE EIGHTEEN (18) TO TWENTY-ONE (21) YEARS OF AGE:** When a child with a disability reaches the age of majority (age eighteen), all rights under these procedures will transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

34 CFR 300.320 (c)

707 KAR 1:340 Section 9 (6)

707 KAR 1:360 Section 10;

Additional ARC Members when a Child is Suspected of a Specific Learning Disability.

If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include other professionals, relative to the areas of concern, such as the school psychologist, speech-language pathologist, or educational specialist, in addition to the listed personnel

707 KAR 1:320 Section 3 (5)

34 CFR 300.308 (b)

The determination of whether a child suspected of having a specific learning disability is a child with a disability and whether the specific learning disability adversely affects educational performance shall be made by the child's ARC.

34 CFR 300.308 (b)

707 KAR 1:310 Section 2 (1)

Agency Representatives Involved in Transition Planning

A public agency that is likely to be responsible for providing or paying for transition services shall also be invited to the extent appropriate and with the consent of the parent, or the child if the child is an emancipated adult. If the representative of the other public agency does not attend, the local educational agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

34 CFR 300.321 (b) (3)

707 KAR 1:320 Section 3 (4)

Legal Representatives

With prior notice to the ARC Chairperson, parents may invite an attorney to represent their child during an ARC meeting. If the parents choose to bring an attorney, the local educational agency attorney shall also attend the ARC meeting. If the parents fail to provide prior notice of their intent to bring an attorney to the ARC meeting, the ARC Chairperson may choose to reschedule the meeting to a time when the parents and the school can meet with attorneys present, or advise parents the ARC may proceed without attorneys.

B. EXCUSAL FROM ARC MEETINGS

When a Member's Area of Expertise Is Not Being Discussed

A member of the ARC may be dismissed from attendance, in whole or in part, if the parents and the local educational agency agree in writing prior to the ARC meeting that the attendance of that member is not necessary because the member's areas of curriculum or related services is not being modified or discussed at the ARC meeting.

34 CFR 300.321 (e) (1)

707 KAR 1:320 Section 3 (2)

When Member's Area of Expertise Is Being Discussed

A member of the ARC team may be dismissed from attendance, in whole or in part, if the parents and the local educational agency agree in writing prior to the ARC meeting to waive the attendance of that member even though the member's area of curriculum or related services will be discussed or modified if:

1. the parent and the local educational agency consent in writing to the excusal; and
2. the member submits, in writing, to the parent and the ARC team, input into the development of the IEP prior to the meeting.

34 CFR 300.321 (e) (2)

707 KAR 1:320 Section 3 (3)

C. NOTICE OF ARC MEETINGS

Contents of Notice of ARC Meetings

Except for a meeting concerning a disciplinary change in placement or a safety issue, the local educational agency will provide written notice to the parents of a child with a disability and each member of the ARC at least seven (7) days before an ARC meeting unless the parent waives the seven-day requirement. The meeting shall be scheduled at a mutually agreed upon time and place. The notice will include:

1. the purpose of the meeting;
2. the proposed date and time of the meeting;
3. location of the meeting;
4. who will be in attendance;
5. notice that the parents may invite people with knowledge or special expertise of the child to the meeting; and
6. notice that the local educational agency will invite representatives from the early intervention program to the initial meeting, if the parents request it.

34 CFR 300.322 (a) & (b) (1) (ii)

707 KAR 1:320 Section 4 (1-2)

Electronic Notice of Meeting

A parent of a child with a disability may elect to receive notices required by sections 300.503 (Prior Notice), 300.504 (Procedural Safeguards Notice), and 300.508 (Due Process Complaint) by an electronic mail communication. The ARC Chairperson will document the parent's election in the student's special education record.

Waiver of Notice

The seven calendar days' notice may be waived if the parent agrees to meet with no notice or notice of less than seven days. The ARC Chairperson will document the parent's agreement to waive the seven days' notice on the "Notice of ARC Meeting".

Disciplinary or Safety Notice of ARC Meeting

A local educational agency will provide written notice and a copy of procedural safeguards to the parents of a child with a disability at least twenty-four (24) hours before an ARC meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

34 CFR 300.503 (a)

707 KAR 1:340 Section 3 (2)

D. ADMISSIONS AND RELEASE COMMITTEE MEETINGS

Conduct of ARC Meetings

The local educational agency will ensure that each child has an ARC that includes the required membership and that an ARC meeting is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

34 CFR 300.324 (b) (1)

Parent Participation

1. To encourage parent participation, ARC meetings shall be scheduled at a mutually agreed upon time and place. The local educational agency will ensure that one or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate.

34 CFR 300.322 (a)

707 KAR 1:320 Section 4 (1)

2. If the parent is unable to attend an ARC meeting, the local educational agency allows parent participation using other methods, which may include individual or conference telephone calls or video conferencing.

34 CFR 300.322 (c)

707 KAR 1:320 Section 4 (5)

3. If the parent's native language is other than English, or if an alternate mode of communication is used by the parent, the local educational agency will arrange for an interpreter or recording to ensure that the parent understands the proceedings at the ARC meeting.

34 CFR 300.322 (e)

707 KAR 1:320 Section 4 (7)

4. The parents participate by:

a. providing information about the child, including information about the child outside the school setting;

b. providing input for development of the IEP;

c. giving written permission for evaluation, initial placement, and reevaluation; and (iv.) providing support for implementation of the IEP.

Conducting the ARC Meeting Without a Parent.

1. An ARC meeting may be conducted without the parent in attendance if the local educational agency is unable to convince the parent that they should attend. The local educational agency will make at least two (2) varied attempts to contact the parent. A local educational agency personnel will keep detailed records of its attempts to arrange a mutually agreed on time and place including the date, time, and name of the person attempting the contact. These records, copies of any correspondence sent to the parent, and any response received, will be filed in the child's special education record. Methods of contacting the parent may include phone calls, mailed Notice of Meeting or other correspondence, home or employment visit, or email if parent has elected to receive the Notice electronically. 707 KAR 1:320 Section 4 (6); 707 KAR 1:340 Section 1 (3) parallels 34 CFR 300.322 (d)

2. If the parent does not attend the meeting, the ARC Chairperson will mail a copy of the Conference Summary and enclosures discussed at the meeting to the parent. The local educational agency will initiate the proposed action as described in the Conference Summary.

Non-Programmatic 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 (e.g., beginning/ending dates, amount of time for services, type of service, etc.). If the local educational agency 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.

34 CFR 300.324 (a) (6)

707 KAR 1:320 Section 2 (2)

Conversations and Non-ARC Meetings without Parent Present

A local educational agency staff may have informal or unscheduled conversations without notice to the parent or a parent present on issues which may include: (a) teaching methodology; (b) lesson plans; (c) coordination of service provision; or (d) preparatory activities that local educational agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

34 CFR 300.501 (b) (2)

707 KAR 1:340 Section 1 (4)

Audio or Video Recordings of ARC Meetings

Unless necessary for the parent to understand the IEP or the IEP process, the local educational agency prohibits the use of recording devices at ARC meetings by anyone other than the ARC Chairperson. Any recording of an ARC meeting that is made and maintained by the local educational agency 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. The ARC Chairperson ensures that any such recording is maintained as a part of the child's special education record.

34 CFR Part 300 Appendix A, Q. 21(1999)

Conference Summary Action Notice

The Conference Summary Action Notice documents decisions that are proposed, considered, accepted and rejected by the ARC. Parents will receive a copy of the Conference Summary and all documents discussed at the meeting either at the close of the meeting, or by mail or email if the parent did not attend the meeting. The Conference Summary Action Notice will include a description or explanation of:

1. the action proposed or refused by the local educational agency;
2. why the local educational agency proposed or refused to take the action;
3. any other options the local educational agency considered and the reasons why those options were rejected;
4. each evaluation procedure, test, record, or report used as a basis for the proposed or refused action;
5. any other factors that are relevant to the local educational agency's proposal or refusal; and
6. 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
7. sources for the parent to contact to obtain assistance in understanding the provisions of this section.

34 CFR 300.503 (b)

707 KAR 1:340 Section 3 (3)

Conference Summary Action Notice in Native Language or other Mode of Communication

The Conference Summary Action Notice provided by the local educational agency will 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. 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 of the parent is not a written language, the Director will 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.

34 CFR 300.503 (c)

707 KAR 1:340 Section 3 (4)

E. NOTICE OF PARENTAL PROCEDURAL SAFEGUARDS

The local educational agency will provide the parents of a child with a disability with a copy of the parental procedural safeguards one (1) time during each school year. A copy of the notice shall also be provided to the parent:

1. upon initial referral or parent request for evaluation;
2. upon receipt of the first state written complaint;
3. upon the receipt of the first filing of a due process hearing in a school year;
4. 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
5. 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.

34 CFR 300.504 (a)

707 KAR 1:340 Section 4 (1-2)

Consent for Reevaluation

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

34 CFR 300.300 (c) (1)

707 KAR 1:340 Section 5 (6)

Parental consent for reevaluation shall not be required if the local educational agency can demonstrate that:

1. it made reasonable efforts (at least two (2) varied attempts) to obtain such consent, and followed the procedures in paragraph 3(b.) of this SECTION G to show those efforts; and
2. the parent failed to respond.

34 CFR 300.300 (c) (2)

707 KAR 1:340 Section 5 (7)

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. The written consent signed by the parent states that the parent understands and agrees:

1. to the provision of special education and related services in the least restrictive environment;
2. that parental consent is given voluntarily; and
3. 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 Action Notice.

Additional consent is not required, 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 (Notice of ARC Meeting and Conference Summary Action Notice) 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 initial provision of specially designed instruction and related services, or fails to respond to a request for consent, the local educational agency 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.

34 CFR 300.300 (b) (3)

707 KAR 1:340 Section 5 (5)

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).

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

No Parental Consent Required

Parental consent shall not be required for (a.) reviewing existing data as part of an evaluation or a reevaluation; or (b.) 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.

34 CFR 300.300 (d) (1)
707 KAR 1:340 Section 5 (8)

F. REPRESENTATION OF CHILDREN

At the time of referral, the ARC Chairperson, through a review of the records of the child or other means, determines if a child:

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

Definition of Parent

For purposes of these procedures, "Parent" is defined as one of the following as set forth in 707 KAR 1:280 Section 1(43):

1. **A BIOLOGICAL OR ADOPTIVE PARENT OF A CHILD:** Either one of the biological or adoptive parents, 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 parents are divorced but have joint legal custody, the Notice will be sent to both parents. However, the ARC may act with either parent in attendance at the meeting. A parent having sole legal custody is the decision-maker for the child.
2. **A GUARDIAN:** 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 (not the State) who can produce a court order that he or she has been granted guardianship of the child. The ARC chairperson obtains a copy of the court order and places a copy in the educational records of the child.
3. **A PERSON ACTING IN THE PLACE OF A BIOLOGICAL OR ADOPTIVE PARENT:** A grandparent, stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare, and who is acting in the place of a biological or adoptive parent will have the rights of the parent when the biological or adoptive parent is unavailable. The "Authorization for Appointment of a Representative for Educational Decisions" form or "Statement of Authorization for Representation" form may be used to document the parental representative.
4. **A FOSTER PARENT:** If the foster parent 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, a foster parent may act as a Parent if:
 - a. 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; or
 - b. the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf; \

If a child is residing with a short-term foster parent (i.e. parental rights have not been extinguished), the local educational agency will follow the procedures applicable to locating the natural or biological parents. If no parent is known, their whereabouts cannot be determined, or parental rights have been terminated

but the foster parent is in a short-term relationship with the child, the Director may assign the foster parent as a surrogate parent.

5. **SURROGATE PARENT** who has been appointed in accordance with 707 KAR 1:340 Section 6.

34 CFR 300.30

707 KAR 1:280 Section 1 (43)

Presumption in Favor of Biological or Adoptive Parents

When more than one party meets the definition of Parent, the biological or adoptive parent will be presumed to be the parent for purposes of these procedures 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" to act as the parent of a child or to make educational decisions on behalf of a child, the order will prevail.

34 CFR 300.300 (a) (2)

707 KAR 1:340 Section 6 (2)

Appointment of Surrogate Parent

The local educational agency will appoint a surrogate parent to make educational decisions for the child if:

1. no individual can be identified as a parent as defined in 707 KAR 1:280;
2. after reasonable efforts, the local educational agency cannot discover the whereabouts of the parent;
3. the child is a ward of the state; or
4. 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 (3); 34 CFR 300.515 (a). 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.

34 CFR 300.519 (b)

707 KAR 1:340 Section 6 (5)

Selection of Surrogate Parent Volunteers

A surrogate:

1. shall not be an employee of the Kentucky Department of Education, the local educational agency, or any other public agency that is involved in the education or care of the child;
 2. shall not have any personal or professional interest that conflicts with the interests of the child;
- and
3. shall have knowledge and skills that ensure adequate representation of the child.

34 CFR 300.519 (d)

707 KAR 1:340 Section 6 (6)

The ARC Chairperson may contact 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 that there is no caregiver or relative eligible and willing to serve as surrogate, the Director selects a surrogate to serve as the educational representative for the child.

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

CFR 300.519 (e)

707 KAR 1:340 Section 6 (7)

The local educational agency will make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the local educational agency that the child needs a surrogate.

CFR 300.519 (h)

707 KAR 1:340 Section 6 (9)

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.

34 CFR 300.519(g)

707 KAR 1:340 Section 6 (10)

Training of Surrogate Parent Volunteers.

The Director will provide 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.

Termination of a Surrogate Parent Assignment.

The Director 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 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.

Commitment to CHFS or DJJ

1. If the child has been committed to the Cabinet for Health and Family Services 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.
2. **PARENTAL RIGHTS TERMINATED.** 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 will immediately contact the Director and obtain a copy of the court order verifying that the child is a Ward of the State and the Director appoints a surrogate parent.
3. **PROTECTIVE CUSTODY.** In instances that involve protective custody of the child, CHFS 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 CHFS representative provide local educational agency with a court order that prohibits parent involvement with the child. A copy of the order is filed in the child's cumulative records and special education records, and the Director appoints a surrogate because the child's parents are unavailable.

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 Section 4 above until a surrogate parent can be appointed that meets all the requirements of 34 CFR 300.519 (f)

707 KAR 1:340 Section 6.

707 KAR 1:340 Section 6 (8)

Age of Majority

When a child with a disability reaches the age of majority (age eighteen), all rights under these procedures and 707 KAR Chapter 1 transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law or the child voluntarily agrees to surrender those rights to the parent. The local educational agency will notify the child with a disability and the parents of the transfer of the rights.

34 CFR 300.520 (a)

707 KAR 1:340 Section 6 (11)

G. KENTUCKY DEPARTMENT OF EDUCATION DISPUTE RESOLUTION

Right to File a Complaint

Any organization or individual including someone from outside the state may file a signed written complaint with the Kentucky Department of Education. 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.

34 CFR 300.15(a).

707 KAR 1:340 Section 7(2)

The complaint shall include:

1. 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;
2. the facts on which the statement is based;
3. a signature and contact information for the complainant;
4. 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;
5. name of the school the child is attending;
6. a description of the nature of the problem, including facts related to the problem;
7. a proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and
8. information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.
9. The party filing the complaint shall forward a copy to the LEA.

34 CFR 300.153 (b) & (d)

707 KAR 1:340 Section 7 (3-4)

Procedures for Addressing the Complaint

The following procedures apply to written complaints filed with the Kentucky Department of Education:

1. the KDE shall have sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;
2. the complainant and the local educational agency shall each have an opportunity to submit additional information about any allegation in the complaint;
3. the local educational agency shall have an opportunity to respond to the complaint including, at least:
 - a. a proposal to resolve the complaint;
 - b. an opportunity for the parent who has filed the complaint and the local educational agency to voluntarily engage in mediation;
4. the KDE shall review all relevant information; and
5. the KDE 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.

34 CFR 300.153 (a)

KAR 1:340 Section 7 (1)

6. 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.

34 CFR 300.152 (b) (1)

707 KAR 1:340 Section 7 (6)

Right to Appeal Written Decision from KDE

The complainant, parent or the local educational agency 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.

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

707 KAR 1:340 Section 7(5)

Implementation of Final Decision

The KDE will ensure effective implementation of the final decision from a complaint. To achieve compliance, the KDE may apply:

1. technical assistance activities;
2. negotiations; or
3. corrective actions.

34 CFR 300.152 (b)(2)

707 KAR 1:340 Section 7 (7)

H MEDIATION PROCESS

Right to Mediation

A 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.

34 CFR 300.506 (a)

707 KAR 1:340 Section 8(1)

The mediation process, if chosen, shall:

1. be voluntary;
2. not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under these procedures; and
3. be conducted by a qualified and impartial mediator trained in effective mediation techniques.

34 CFR 300.506 (b) (1)

707 KAR 1:340 Section 9 (1)

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

1. not be an employee of: the Kentucky Department of Education or the local educational agency;
2. be chosen at random for the mediation process; and
3. not have a personal or professional conflict of interest.

34 CFR 300.506 (b) (3)

707 KAR 1:340 Section 9 (2)

A local educational agency uses the procedures and forms in the Kentucky Department of Education's Special Education Procedure Manual, 2000 and the KDE Mediation for Students with Disabilities to begin the process for mediation.

Cost of Mediation.

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

34 CFR 300.506 (b) (4)

707 KAR 1:340 Section 9 (3)

Mediation Sessions.

The sessions in the mediation process shall be:

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

34 CFR 300.506 (b) (5)

707 KAR 1:340 Section 9 (4)

Mediation may address issues surrounding the education of the child, including ongoing alleged violations of IDEA, compensatory education, or any other issue related to the child's enrollment in the school district.

34 CFR 300.506 (a)

707 KAR 1:340 Section 9 (7)

Resolution at Mediation Session

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

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

34 CFR 300.506 (b) (6-7)

707 KAR 1:340 Section 9 (5)

Both the parent and a representative of the local educational agency who has the authority to bind the local educational agency shall sign the agreement. The agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

34 CFR 300.506 (b) (7)

707 KAR 1:340 Section 9 (6)

I. DUE PROCESS HEARING

Resolution

Within fifteen (15) days of receiving notice of parental request for a due process hearing, the local educational agency will convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the local educational agency will determine the relevant ARC members to attend the resolution session.

707 KAR 1:340 Section 10 (1)

34 CFR 300.510 (a)

The purpose of this meeting is:

1. to allow the parents to discuss their due process hearing request;
2. to discuss the facts that formed the basis of the request; and
3. to give the local educational agency an opportunity to resolve the complaint.

34 CFR 300.510 (a) (2)

707 KAR 1:340 Section 10 (2)

Waiver

This meeting shall not take place if the parents and the local educational agency agree in writing to waive the meeting or agree to use the mediation process. 707 KAR 1:340 Section 10 (3); 34 CFR 300.510 (a) (3)

Agreement

If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is:

1. signed by both the parent and a representative of the local educational agency who has the authority to bind the local educational agency;

2. placed in the student's education record; and
3. is enforceable in any state court of competent jurisdiction or a district court of the United States.

34 CFR 300.510 (d)

707 KAR 1:340 Section 10 (4)

The dispute resolution agreement may be voided by either party within three (3) business days of the agreement's execution.

34 CFR 300.510 (e)

707 KAR 1:340 Section 10 (5)

If the local educational agency has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur

34 CFR 300.510 (b)

707 KAR 1:340 Section 10 (6)

The timeline for issuing a final decision pursuant to 34 CFR 300.515 will begin at the expiration of the thirty (30) day timelines referred to in 707 KAR 1:340 Section 10(6), except for adjustments allowed in 707 KAR 1:340 Sections 11 and 12.

34 CFR 300.510(b)(2)

707 KAR 1:340 Section 10(7)

Failure of Parent to Participate

The failure of the parent who filed the due process hearing request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless the parties have jointly agreed to waive the resolution process or use mediation.

If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the local educational agency may request, at the conclusion of the thirty (30) day period, that a hearing officer dismiss the parent's due process hearing request.

34 CFR 300.510 (b) (3-4)

707 KAR 1:340 Section 10 (8 & 9)

The local educational agency will keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:

1. detailed records of telephone calls made or attempted and the results of those calls;
2. (ii) copies of correspondence sent to the parents and any responses received; and
3. (iii) detailed records of visits made to the parents' home or place of employment and the results of the visits.

34 CFR 300.322 (d)

707 KAR 1:340 Section 10 (10);

Failure of local educational agency to Hold Resolution Session

If the local educational agency fails to hold the resolution meeting within fifteen (15) days of receiving the notice of a parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the forty-five (45) day due process hearing timeline in 34 CFR 300.515.

34 CFR 300.510 (b)(5)

707 KAR 1:340 Section 10(11)

Effect on Hearing Timeline

The forty-five (45) day timeline for the due process hearing in 34 CFR 300.515 starts the day after one of the following: (a.) both parties agree in writing to waive the resolution meeting; (b.) after either the mediation or

resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or (c.) if both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the local educational agency withdraws from the mediation process.

34 CFR 300.510 (c)

707 KAR 1:340 Section 10 (12);

J. DUE PROCESS HEARINGS

Right to Due Process Hearing

A parent or the local educational agency may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child or refusal to initiate or change the identification, evaluation, or educational placement of the child.

34 CFR 300.507 (a)

707 KAR 1:340 Section 8 (2)

1. **PRIVATE SCHOOL.** Hearing rights for children unilaterally placed in private schools by their parents are limited to Child Find, evaluation, and reevaluation issues.
2. **MEDIATION.** When a hearing is initiated, the local educational agency shall inform the parent of the availability of mediation to resolve the dispute.
34 CFR 300.507 (a) (2)
707 KAR 1:340 Section 8 (3);
3. **LEGAL SERVICES.** The local educational agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or the local educational agency initiates a hearing.
34 CFR 300.506 (a)
707 KAR 1:340 Section 8 (4)

Hearing Requests

The parent of a child with a disability or the attorney representing the child shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

1. the name of the child;
2. the address of the residence of the child;
3. the name of the school the child is attending;
4. a description of the nature of the problem; and
5. facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

34 CFR 300.508(b)

707 KAR 1:340 Section 11(1);

The party requesting the hearing (the parent, the parent's authorized agent, or local educational agency) submits "Request for a Due Process Hearing" form to the Associate Commissioner, Office of Special Education and Early Learning, Kentucky Department of Education, 300 Sower Blvd. Frankfort, KY 40601.

34 CFR 300.508(a)

707 KAR 1:340 Section 11(2)

A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the required information. This notice shall be provided to the other party and to the Kentucky Department of Education.

34 CFR 300.508 (a)

707 KAR 1:340 Section 11 (3)

Hearing Procedures

The procedures included in KRS Chapter 13B and IDEA Subpart E shall apply to a due process hearing.
707 KAR 1:340 Section 11 (4)

Cancellation

If, after local educational agency requests a due process hearing, local educational agency personnel and the parent come to an agreement on the issue(s) presented in the hearing request, the party requesting the hearing submits a letter to the hearing officer and KDE requesting cancellation of the hearing request.

Child Status during Pendency of Judicial Proceedings

Except as provided in 707 KAR 1:340, Section 14 (Manifestation Determination) and Section 15 (Appeals), during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall remain in the child's current educational placement, unless the parent and the local educational agency agree to another placement.

However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child who is transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case, the local educational agency shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the local educational agency.

34 CFR 300.518 (a) & (c)

707 KAR 1:340 Section 12 (3)

If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school in an age and grade appropriate placement until the proceedings are final.

34 CFR 300.518 (b)

707 KAR 1:340 Section 12 (4)

If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents.

34 CFR 300.518(d)

K. APPEALS BY PARENT OR THE LOCAL EDUCATION AGENCY

Exceptional Children Appeals Board

A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. To request an appeal, the party sends, by certified mail, within thirty (30) calendar days of the hearing officer's decision, a written request for an appeal to the Exceptional Children Appeals Board, Kentucky Department of Education, 300 Sower Blvd., Frankfort, KY 40601. The requesting party also sends a copy of the appeal to the opposing party.

34 CFR 300.510 (b) (1)

707 KAR 1:340 Section 12 (1)

Civil Action

A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

34 CFR 300.514 (d)

34 CFR 300.516 (a)

707 KAR 1:340 Section 12 (2)

Chapter 3 – DISCIPLINE OF CHILDREN WITH DISABILITIES

The Superintendent, Director, and building principals ensure that appropriate procedures are followed in the discipline, suspension, and expulsion of children with disabilities.

A. STUDENT DISCIPLINE – NO CHANGE OF PLACEMENT

Behavior Interventions and Supports

(a.) In the case of a child whose behavior impedes his or her learning, or that of others, the ARC will, consider, if appropriate, strategies, including positive interventions strategies and supports, to address that behavior.

34 CFR 300.320 (a) (1) (i)

707 KAR 1:320 Section 5 (2) (a)

In-School Suspension

An in-school suspension will not be considered as part of the days of suspension addressed in §300.530 (the 10-days of Removal) as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. However, portions of a school day during which a child has been suspended may be considered as a removal for determining whether there is a pattern of removals.

Removal for 10 or Fewer School Days

School personnel may remove a student with a disability who violates the code of acceptable behavior from the student's placement to an appropriate interim alternative education setting, another setting, or suspension, for not more than ten (10) consecutive school days to the extent those alternatives are applied to children without disabilities.

34 CFR 300.530 (b) (1)

707 KAR 1:340 Section 13 (2)

School personnel may remove a student with a disability from the student's current placement for additional periods of time of not more than the ten (10) consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change in placement because of disciplinary removals. 707 KAR 1:340 Section 13 (3); 34 CFR 300.530 (b) (1) (c.)

The local educational agency is not required to provide educational services to children with or without disabilities during periods of removal of 10 or fewer school days in the same school year.

34 CFR 300.530(d) (3)

707 KAR 1:340 Section 13(8)

B. CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS

ARC Determination

The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change of placement for a child with a disability who violates a code of student conduct.

707 KAR 1:340 Section 13(1)

34 CFR 300.530(a)

Notice to Parents

Notice of Removal: On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the local educational agency will notify the parents of that decision, and provide the parents the procedural safeguards notice.

34 CFR 300.530 (h)

707 KAR 1:340 Section 4

707 KAR 1:340 Section 14 (6)

Notice of Meeting: Unless waived by the parent, the local educational agency will 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 (2); 34 CFR 300.503 (a)

Action Constituting Change of Placement

A “Change in Placement” because of disciplinary removals means a change of placement that occurs because:

1. the removal is for more than ten (10) consecutive school days; or
2. the child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:
 - a. the series of removals total more than ten (10) school days in a school year;
 - b. the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
 - c. of additional factors including the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another.
3. This determination is subject to review through due process and judicial proceedings.

34 CFR 300.536(a) & (b)
KRS 158.150 (7)(a)
KAR 1:280 Section 1 (8)

ARC Meeting to Determine Appropriate Services

If a removal is a change of placement because of disciplinary removals, the child’s ARC shall convene within ten (10) school days after the change of placement is made and will determine the appropriate educational services for the child. If the student has been placed in an interim alternative educational setting the local educational agency will invite staff from that alternative setting to the ARC meeting.

34 CFR 300.530 (d)(5)
707 KAR 1:340 Section 13 (10)

Identifying a Pattern of Removals

The building principal and Director, or designee, will review the behavioral information to determine if the removal constitutes a pattern by reviewing the child’s behavior in relation to the following factors:

1. the removals total more than ten (10) school days in a year;
2. the child’s behavior for the current removal substantially similar to the child’s behavior in previous incidents;
3. the length of each removal;
4. the total amount of time the child has been removed; and
5. the proximity of removals to one another.

C. MANIFESTATION DETERMINATION

ARC Performs Manifestation Determination.

Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the relevant members of the child’s ARC, as determined by the local educational agency and the parent, will convene a meeting to review all relevant information in the student’s file, including the child’s IEP, any teacher observations, teacher collected data, and any relevant information provided by the parents to determine:

1. if the conduct in question was caused by, or had a direct and substantial relationship to the child’s disability; or
2. if the conduct in question was the direct result of the local educational agency’s failure to implement the IEP.

The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either of these conditions occurs.

34 CFR 300.530 (c)

34 CFR 300.530 (e)(1)

34 CFR 300.530 (e) (2)

707 KAR 1:340 Section 14 (1)

707 KAR 1:340 Section 14 (2)

Behavior IS NOT a Manifestation of the Disability.

If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.

707 KAR 1:340 Section 13(4)

Behavior IS a Manifestation of the Disability.

If the ARC determines that the conduct was a manifestation of the child's disability, the ARC will:

1. a. conduct a functional behavioral assessment unless the local educational agency has conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or
b. review the behavioral intervention plan, (if one has already been developed) and modify it, as necessary, to address the behavior; and
2. return the child to the placement from which the child was removed unless the local educational agency and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because the violation involved drugs, weapons or serious bodily injury.

34 CFR 300.530 (f)(1) & (2)

707 KAR 1:340 Section 14(4)

3. take immediate steps to remedy deficiencies if the student's conduct was the direct result of the local educational agency's failure to implement the IEP.

34 CFR 300.530 (e) (3)

707 KAR 1:340 Section 14 (3)

Local educational agency staff should review data to monitor the effectiveness of interventions. If the data suggests that interventions are not effective, an ARC meeting should be called for the purpose of reviewing and revising interventions.

D. PROVIDING SERVICES FOR STUDENTS REMOVED FOR MORE THAN TEN DAYS

Services Provided When Removal is in Excess of Ten Consecutive Days.

A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:

1. continue to receive a free appropriate education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
2. receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur. The Director arranges for appropriate local educational agency teachers and related service personnel to provide special education and related services for the student.
3. The local educational agency will provide educational services for a child with a disability during a period of expulsion or long-term removal.
4. These services may be provided in an interim alternative educational setting.

34 CFR 300.530 (d) (1) & (2)

707 KAR 1:340 Section 13 (6) & (7)

Services When Student Has Exceeded Ten Days Prior to Current Removal

After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, the ARC shall determine the extent to which educational services explained in above in paragraph D.1. and 707 KAR 1:340 Section 13 (6) are needed.

34 CFR 300.530 (d) (4)

707 KAR 1:340 Section 13 (9)

E. REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING

45-Day Placement

School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability, of the child:

(a) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the local educational agency;

(b) knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the local educational agency; or

(c) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the local educational agency.

707 KAR 1:340 Section 14 (5); 34 CFR 300.530 (g)

Definitions Related to 45-Day Placement

1. **CONTROLLED SUBSTANCE** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act.

20 U.S.C. 812(c)

34 CFR 300.530 (i) (1)

2. **ILLEGAL DRUG** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other Federal law.

34 CFR 300.530 (i) (2)

3. **SERIOUS BODILY INJURY** means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

18 U.S.C. 1365 (3) (h)

34 CFR 300.530 (i) (3)

4. **WEAPON** means a weapon, 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 2½ inches in length.

18 USC 930 (g) (2)

34 CFR 300.530 (i) (4)

Determination of Interim Alternative Educational Setting (IAES)

The ARC of the child shall determine the interim alternative educational setting (IAES) and the services for any child removed when a student's behavior has been determined not to be a manifestation of the student's

disability or when a child is removed for drugs or weapons under the 45-day provision in paragraph 1 of this Section.

34 CFR 300.530 (d) (2)

707 KAR 1:340 Section 14 (7)

Appeal from IAES Decisions or Manifestation Determination

1. The parent of a child with a disability who disagrees with any decision regarding placement for disciplinary reasons, or the manifestation determination, or the local educational agency if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a due process hearing by using the procedures in 707 KAR 1:340 Sections 8 and 11.

34 CFR 300.532 (a)

707 KAR 1:340 Section 15 (1)

2. A hearing officer shall hear and make a determination regarding an appeal requested pursuant to this subsection.

707 KAR 1:340 Section 15(2).

3. In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:

a. return the child to the placement from which the child was removed; or

b. order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

34 CFR 300.532(b)

707 KAR 1:340 Section 15 (2-3)

4. An appeal under this section shall: (a.) be conducted in an expedited manner; (b.) shall occur within twenty (20) school days from the date the request is filed; and (c.) shall result in a determination within ten (10) school days after the hearing.

34 CFR 300.532 (b)

707 KAR 1:340 Section 15 (2) (3) (5)

Stay Put Provision During Appeal

When an appeal has been requested pursuant to this section, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time ordered by the hearing officer, whichever occurs first, unless the parent and the local educational agency agree otherwise.

34 CFR 300.533

707 KAR 1:340 Section 15 (4)

F. REPORTING TO LAW ENFORCEMENT AGENCIES

Crimes Committed by Children with Disabilities

Notwithstanding any provisions of Kentucky's Special Education Programs Administrative Regulations (707 KAR Chapter 1) the local educational agency may report a crime committed by a child with a disability to appropriate authorities.

34 CFR 300.535(a)

707 KAR 1:340 Section 17(1)

Temporary Injunctive Relief for Dangerous Children

If the ARC determines that a child's behavior is related to his disability, the child shall not be suspended any further or expelled unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. The local

educational agency may seek temporary injunctive relief through the courts if the parent and the other members of the ARC cannot agree upon a placement and the current placement will likely result in injury to the student or others.

KRS 158.150 (7) (c)

Transmission of Records

If the local educational agency reports a crime committed by a child with a disability, it will ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g. The local educational agency staff follows Board Policy for the release of special education records.

34 CFR 300.535(b)(2)

707 KAR 1:340 Section 17(2)

Chapter 4 – EVALUATION

A. REFERRAL SYSTEM

Early Intervening Services

The local educational agency may conduct early intervening services for students from kindergarten through 12th grade (with particular emphasis on students in kindergarten through grade three) who need additional academic and behavioral support in order to be successful in the regular education environment prior to referral for special education. The local educational agency will not spend more than 15% of the money received under IDEA Part B on coordinated early intervening services.

34 CFR 300.226

707 KAR 1:300 Section 2

B. ARC EVALUATION MEETING

The ARC Chairperson or other ARC member will describe the decision-making process, which may include the following steps:

1. review student performance and referral information, and determine if the student significantly differs from peers;
2. determine if the interventions implemented were appropriate;
3. decide whether the information is sufficient and supports that the child may have an educational disability;
4. specify the suspected disability or disabilities, if any;
5. identify the areas of assessment for the suspected disability or disabilities; and
6. obtain parental consent for evaluation before initiating any individual evaluation procedure.

ARC Review of Existing Data and Referral Information

1. Assessment tools and strategies shall be used that provide relevant information that directly assists and is used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, if necessary, shall review existing evaluation data on the child including:
 - a. evaluations and information provided by the parents;
 - b. current classroom-based, local, or state assessments and classroom-based observations; and
 - c. observations by teachers and related services providers.
2. Screenings conducted by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation will not be considered to be an evaluation for eligibility for specially designed instruction and related services and do not need parental consent.

34 CFR 300.302

707 KAR 1:300 Section 4 (3)

Review of Appropriate Interventions

The ARC will review the interventions implemented for the area(s) of concern to verify that appropriate instruction and support have been provided. The ARC will analyze documentation and decide whether:

1. the intervention addressed the area(s) of concern;
2. the interventions were research based (e.g. strategies, methods, materials);
3. the interventions were implemented with fidelity; and
4. the interventions were effective by analyzing the student's rate of learning.

Determination of Sufficient Information

1. On the basis of the review, and input from the parents, the ARC will identify what additional data, if any, are needed to determine:

- a. whether the child has a particular category of disability and the educational needs of the child, or in the case of a reevaluation of the child, whether the child continues to have a disability, and the educational needs;
- b. the present levels of academic achievement and related developmental needs of the child;
- c. whether the child needs special education and related services, or in the case of a reevaluation, whether the child continues to need specially designed instruction and related services; and
- d. whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum.

34 CFR 300.305 (a)

- 1. R 1:300 Section 4 (14-15)
- 2. Evaluation information will be determined sufficient if:
 - a. multiple non-discriminatory methods or measures were used to evaluate the areas of concern previously specified by the ARC;
 - b. data on family, environmental, and cultural factors is available for analysis to assist in the determination of the impact on educational performance;
 - c. referral data and additional information document the present levels of academic achievement and related developmental needs of the child, including how the disability affects the child's involvement and progress in the general curriculum;
 - d. information given provides objective and reliable indicators of the child's performance;
 - e. the documentation of the evaluation information is complete and reflects the information collected by the multidisciplinary team in all areas related to the suspected disability.
- 3. If sufficient information is not available, the ARC will determine what information needs to be collected, and a date to reconvene the meeting for review of that data.

Determination of a Suspected Disability

The child will be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The ARC may consider more than one disability area.

34 CFR 300.304 (c) (4)

707 KAR 1:300 Section 4(10)

Identifying the Areas for Assessment

- 1. The evaluation will be sufficiently comprehensive to identify all the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

34 CFR 300.304 (c) (6)

707 KAR 1:300 Section 4(11)

- 2. The ARC will identify the components required for comprehensive assessment of each area of suspected disability and will document the components for evaluation on the Evaluation Plan form. The ARC will identify qualified evaluators to complete the comprehensive assessment.

Requesting Consent for Evaluation Services

- 1. The local educational agency must obtain informed parental consent before conducting any initial evaluation or reevaluation activities and before the initial provision of specially designed instruction and related services.

34 CFR 300.300 (a) (1)

707 KAR 1:340 Section 5 (1)

- 2. If the parent does not give written consent for the evaluation, the ARC Chairperson and the Director will follow local educational agency procedures for denial or revocation of parental consent.
- 3. The local educational agency will ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of

the services. The results of the evaluation will be used by the ARC in meeting the requirements for developing an IEP as provided in 707 KAR 1:320.

34 CFR 300.301 (a)

707 KAR 1:300 Section 4 (1)

Information does not Support a Suspected Disability

If the ARC determines that the referral does not support the possibility of the presence of a disability, and decides not to conduct an evaluation, the recorder will document those decisions in the Conference Summary. The ARC may discuss specific instructional and curricular supports that might be implemented in the regular classroom including support services (e.g., Title I, counseling, peer tutoring, ESS services) to be offered through the local educational agency. This refers to the supports and intervention that are available to children who are not disabled and are enrolled in a similar program.

Students who Transfer During the Evaluation Process

1. Assessments and evaluation of children with disabilities who transfer from one school district to another in the same academic year will be coordinated with the previous and current schools as necessary and as expeditiously as possible, to ensure prompt completion of a full evaluation.

34 CFR 300.304(c) (5)

707 KAR 1:300 Section 4(13)

2. The sixty (60) school-day timeline shall not apply in the following situations:
 - a. if the child moves to a new local school district after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new school district is making sufficient progress to complete the evaluation and the parent and the new school district agree to a specific time when the evaluation shall be completed; or
 - b. if the parent repeatedly fails or refuses to produce the child for evaluation.

34 CFR 300.301 (d) (1) & (e)

707 KAR 1:320 Section 2 (5)

C. EVALUATION INSTRUMENTS AND PROCESS

Assessment Tools

1. A variety of assessment tools and strategies will be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum described in the Kentucky Program of Studies.

34 CFR 300.304 (b) (1)

707 KAR 1:300 Section 4 (5)

2. The local educational agency will use assessment tools and strategies that provide relevant information that directly assists and is used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, if necessary, will review existing evaluation data on the child including:

- a. evaluations and information provided by the parents;
- b. current classroom-based, local, or state assessments and classroom-based observations; and
- c. observations by teachers and related services providers.

707 KAR 1:300 Section 4 (14); 34 CFR 300.305 (a) (1)

Assessment Tool Criteria

The local educational agency will use the following criteria and procedures in the administration of assessments.

1. Standardized tests shall:
 - a. have been validated for the specific purpose for which it is used;

- b. be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests; and
- c. be conducted under standard conditions unless a description of the extent to which it varied from standard conditions is documented in the evaluation report.

34 CFR 300.304 (c)(1)

707 KAR 1:300 Section 4(6)

- 2. Tests and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

34 CFR 300.304 (c) (2)

707 KAR 1:300 Section 4 (7)

- 3. A single procedure will not be used as the sole criterion for determining whether a child is “a child with a disability” and for determining an appropriate educational program for the child.

34 CFR 300.304(b)(2)

707 R 1:300 Section 4(9)

- 4. Assessments tools used shall be technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

707 KAR 1:300 Section 4(12); 34 CFR 300.304(b) (3)

- 5. Tests will be selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child’s aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child’s impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

34 CFR 300.304(c)(3)

707 KAR 1:300 Section 4(8);

Observations for Children Suspected of Having a Specific Learning Disability.

- 1. At least one team member, who is trained in observation techniques and methods, other than the child’s regular education teacher will observe the child in the learning environment, including the regular classroom setting, to document academic performance and behavior in the area of difficulty. If the child is less than school age or is out of school, the observation will take place in an environment appropriate for the child (e.g., preschool programs, vocational programs, day care, community, or home).

34 CFR 300.310

707 KAR 1:310 Section 2(5)

- 2. Documentation of behavior observation(s) includes a description of the activity and behaviors observed, including:

- a. the specific behavior(s) related to areas of concern;
- b. the setting(s) in which observations occurred;
- c. times and lengths of observations, dates, and observers;
- d. criteria against which the targeted behavior(s) is judged (e.g., behavior(s) of comparison group, expected appropriate behavior); and
- e. data collected over time demonstrating the frequency, duration, latency, or intensity of targeted behavior(s).

Tests Administered in the Native Language or Other Communication Mode

Tests and other evaluation materials used to assess a child will be:

- 1. selected so as not to be discriminatory on a racial or cultural basis; and
- 2. administered in the child’s native language or other mode of communication most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

34 CFR 300.304(c) (1)

707 KAR 1:300 Section 4(2)

3. "It clearly is not feasible" to administer an evaluation instrument in the native language or to conduct an assessment in the mode of communication when, after consultation with the Kentucky Department of Education (KDE) and each surrounding state supported institution of higher education within the State, no translator or interpreter can be found.

4. Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has a disability and needs specially designed instruction and related services, rather than measuring the child's English language skills.

707 KAR 1:300 Section 4(4)

The local educational agency follows the state guidelines on testing students with limited English proficiency (*Inclusion of Special Populations in the State Required Assessment and Accountability Programs*, 703 KAR 5:070)

Responsibilities of Evaluation Personnel

1. The local educational agency evaluation personnel will select and administer current editions of assessment instruments and will follow the "Standard Industry Practice" ("SIP") for using newly revised assessment instruments. The SIP mandates that two years after the release of a new assessment instrument, the old assessment is considered out of date.

2. The Director will ensure that each person administering and interpreting evaluation instruments meets the training specifications stated in the test administration manual. Local educational agency evaluation personnel are trained in:

- a. specific areas of evaluation of children with disabilities;
- b. the specific evaluation procedures used with children having disabilities;
- c. use of the procedures for the purpose intended by the developer and with individuals for whom their reliability and validity are empirically supported; and
- d. selection and administration of evaluation procedures so that impaired motor, emotional, communication, and sensory skills or cultural differences do not interfere with the evaluation of other skills and abilities.

3. The local educational agency evaluation personnel will ensure that:

- a. evaluation procedures that are appropriate for the age and ability level of the child are used; and
- b. the procedures selected are normed on a population that includes children of the same age.

4. Each evaluator:

- a. selects tests and other procedures they have been trained to administer;
- b. administers, scores, and interprets the tests and procedures selected according to the instructions specified in the test manuals or through training for each test or procedure;
- c. makes sure that tests are not administered to children whose age, disability, linguistic or cultural background is outside the range of his or her training or experience; and
- d. describes any modification of standard test administration procedures or scoring with cautions regarding the possible effects of such modifications on validity.

Over-Representation or Under-Representation

1. The local educational agency personnel utilize tests, materials, and processes that are culturally sensitive. If otherwise valid and reliable testing and evaluation materials appear to have led to the over-representation or underrepresentation of children who are members of a particular race, socioeconomic level, national origin or cultural group in any category of children with disabilities, the local educational agency will conduct a self-evaluation and develop an action plan.

2. The self-evaluation will be made under the direction of the Director and may include:

- a. determining whether additional or substitute materials and procedures that have at least equal predictive validity, but do not have such an effect on members of a particular racial, national origin or cultural group, can be identified;
- b. taking any actions to evaluate this effect and to eliminate or overcome racial or cultural insensitivity which results from:
 - i. the use of tests with content or language bias;
 - ii. the use of tests that lack validity for a group of persons with whom they are used;
 - iii. the use of tests that lack reliability for a group of persons with whom they are used;
 - iv. the administration of evaluation procedures by evaluators not trained and experienced in evaluating children and youth of a particular culture and linguistic background;
 - v. child unfamiliarity with test behaviors and assumptions;
 - vi. child discomfort with the test administrator or testing environment; or
 - vii. the failure to integrate evaluation information from multiple sources or to reconcile inconsistent or conflicting evaluation results.

Contractual Arrangements with Evaluators

When cognitive or intellectual evaluation is obtained by a contract with an outside provider, the Director will ensure that the evaluation is conducted by persons certified or licensed to conduct such assessments by the State Board of Psychology or Kentucky Board of Medical Licensure. Copies of the contracts and certificates or licenses of the outside providers will be obtained and maintained by the Director prior to the initiation of the contract.

Written Evaluation Report

1. The local educational agency will provide a copy of the evaluation report to the parent.
34 CFR 300.306 (a) (1)
707 KAR 1:310 Section 1 (1)
2. The written report of the evaluation data used and interpreted by the ARC for determining eligibility and planning an appropriate program may include:
 - a. child identification information (i.e., name, parents, phone, date of birth, grade, school);
 - b. a comparison and interpretation of the performance of the child to similar age peers;
 - c. the full name of instruments and procedures used, the date each was administered and by whom; any departures from standard test administration procedures and the reasons for that departure;
 - d. data and sources from standardized, norm-referenced measures which include standard scores and not solely percentiles, grade, or age equivalents; are reported with confidence intervals; and are in a form that allows for inter-test comparisons (e.g., converted to age-based scores);
 - e. data from all informal measures, including results of interventions tried before referral and a summary of behaviors noted during the observation(s) of the child;
 - f. an explanation of any discrepancies among evaluation results, e.g., between formal test results and the customary behaviors and daily activities of the child;
 - g. statements about the unique or individual differences of the child related to the education environment and success in general education curriculum;
 - h. statements about specific classroom tasks or contexts that are unique to the child (e.g., error pattern analysis, learning style or learning preferences; incentive or motivational style; communication and interpersonal skills);
 - i. statements about other factors that impact the educational performance of the child (e.g., medical, environmental, cultural, or linguistic factors);

- j. Descriptions of the types of activities that might effectively meet the unique educational needs of the child (e.g., instructional techniques, modifications or adaptations; behavior management strategies; lighting, study carrels); and
 - k. a list of the names and professional roles of all evaluators.
3. When computer-assisted reports are used, the program will:
- a. allow for input of individually relevant data beyond demographic data;
 - b. respond to the specific concerns of the ARC;
 - c. analyze the data including the provision of recommendations that relate to individualized instructional planning specific to the individual child; and
 - d. allow for application of Kentucky-specific eligibility criteria (i.e., Kentucky developed guidelines).

D. REEVALUATION

Timing of Reevaluations.

1. **MINIMUM OF EVERY THREE YEARS.** The local educational agency will ensure a reevaluation, unless the parent and LEA agree that a reevaluation is unnecessary. A reevaluation may consist of the review described in paragraph C.1.(b) above (EVALUATION – Assessment Tools)) and is conducted at least every three (3) years to determine:
- a. the present levels of performance and educational needs of the child;
 - b. whether the child continues to need specially designed instruction and related services; and
 - c. whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.

34 CFR 300.305 (a) (2) (B)

707 KAR 1:300 Section 4 (18)

2. **PRIOR TO TERMINATION OF CHILD'S ELIGIBILITY.** The local educational agency will evaluate a child with a disability in accordance with 707 KAR 1:300 before determining that the child is no longer a child with a disability.

34 CFR 300.305 (e) (1-2)

707 KAR 1:300 Section 4 (20)

3. **UPON GRADUATION OR AGING OUT.** The local educational agency may, but will not be required to, conduct an evaluation as described in this section before the termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age of eligibility for a free, appropriate public education. For students who graduate or age out of the program, local educational agency will provide the child with a summary of the child's academic achievement and functional performance including recommendations on how to assist the child in meeting the child's postsecondary goals.

34 CFR 300.305 (e)(3)

707 KAR 1:300 Section 4(21)

4. A reevaluation will not be conducted more than once a year unless the parent and the local educational agency agree otherwise.

34 CFR 300.303 (b) (1)

707 KAR 1:300 Section 4 (19)

Informal Meeting to Discuss Need for a Reevaluation

Prior to the ARC meeting to discuss the need for a reevaluation, teachers, related services providers, and the school psychologist or diagnostician may meet to gather and review existing data collected about the child and make recommendations to the ARC for the reevaluation process.

34 CFR 300.305 (b)
707 KAR 1:340 Section 1 (4)

ARC Review of Data

1. As with initial evaluations, assessment tools and strategies will be used that provide relevant information that directly assists and is used in the determination of the educational needs of the child. As part of any reevaluation, the ARC and other qualified professionals, if necessary, will review existing evaluation data on the child including:
 - a. evaluations and information provided by the parents;
 - b. current classroom-based, local, or state assessments and classroom-based observations; and
 - c. observations by teachers and related services providers.

34 CFR 300.305 (a) (1)
707 KAR 1:300 Section 4 (14)

2. The local educational agency shall not be required to conduct a reevaluation, if:
 - a. after review of the existing data, the ARC determines:
 - i a reevaluation is not necessary to determine whether the child continues to be eligible for services; and
 - ii a reevaluation is not warranted to determine the education or related services needs, including improved academic achievement and functional performance; and
 - b. the parents or teacher do not request a reevaluation.

3. If the parent requests an assessment of their child, the local educational agency may refuse to conduct the assessment, but provides the parents with a copy of the Conference Summary stating the refusal to conduct the assessment and the reasons for the refusal. The parents may request mediation or due process if they want the assessment conducted.

34 CFR 300.303(a)
707 KAR 1:300 Section 4(17)

Determination of Sufficient Information

1. On the basis of the review, and input from the parents, the ARC shall identify what additional data, if any, are needed to determine:
 - a. whether the child has a particular category of disability and the educational needs of the child, or in the case of a reevaluation, whether the child continues to have a disability, and the educational needs;
 - b. the present levels of academic achievement and related developmental needs of the child;
 - c. whether the child needs special education and related services, or in the case of a reevaluation, whether the child continues to need specially designed instruction and related services; and
 - d. whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum.

34 CFR 300.305 (a)
707 KAR 1:300 Section 4 (15)

2. INFORMATION SUFFICIENT.

- a. If, for purposes of a reevaluation, the ARC determines that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency will notify the child's parents:
 - i of that determination and reasons for it; and

- ii of the right of the parents to request a reevaluation to determine whether, for purposes of services, the child continues to be a child with a disability.

34 CFR 300.305 (d) (1)

707 KAR 1:300 Section 4 (16)

b. The ARC summarizes the data review and completes the Reevaluation Report. The completed Reevaluation Report is used as the Written Evaluation Report. The ARC completes the Eligibility Report for the reevaluation process.

c. The ARC Chairperson documents the decision and the reasons not to conduct further assessment for reevaluation on the Conference Summary. The ARC Chairperson includes in the Conference Summary, the right of the parent to request a reevaluation. The ARC Chairperson gives the parents a copy of the Reevaluation Report and the Conference Summary.

3. **FURTHER ASSESSMENT REQUIRED.**

The ARC may determine that additional information is needed when the child demonstrates significant progress or lack of progress in academic, behavioral, or social areas that may indicate a need for a change of program, services, or placement. The ARC will:

- i identify any areas needing further assessment;
- ii complete an Evaluation Plan identifying areas of needed assessment;
- iii obtain parent consent for evaluation;
- iv complete the identified components for assessment;
- v complete the reevaluation report.

If, after review of the existing data, the ARC determines there is sufficient data to make decisions in some areas (eligibility in more than one area of disability), the ARC completes the reevaluation report and eligibility form for the relevant areas. Upon completion of the requested reevaluation information, the ARC will reassemble to review the additional evaluation information. The reevaluation report completed at the prior ARC meeting becomes an addendum to the written evaluation report. The ARC will complete the Eligibility Determination form for the remaining area(s) of disability.

4. **FULL AND INDIVIDUAL ASSESSMENT NECESSARY.** If, after the review of existing data, the ARC determines there is not sufficient data to make decisions for continued eligibility or IEP planning, and/or the ARC is proposing to assess the child in another area of suspected disability, the ARC will follow Evaluation Procedures and request consent for evaluation.

Re-administration of Cognitive Assessments

The ARC will apply the following criteria to determine if re-administration of an individual intelligence test is necessary for a reevaluation:

1. the child has a minimum of two IQ scores with one being at or above age 9; and
2. the child's IQ scores have a confidence interval of not less than 90%.

E. INDEPENDENT EDUCATIONAL EVALUATION

Parent's Right to an Independent Educational Evaluation

1. A parent of a child with a disability has a right to obtain an independent educational evaluation of the child.

34 CFR 300.502 (a)(1)

707 KAR 1:340 Section 2(1)

2. If a parent requests an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the local educational agency, the local educational agency will, without unnecessary delay: (i) initiate a due process hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense

unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent did not meet local educational agency criteria.

34 CFR 300.502 (b)(2)

707 KAR 1:340 Section 2(3)

3. If a parent requests an independent educational evaluation, the ARC Chairperson will document the request, notify the Director, and schedule an ARC meeting to review the request. The ARC may attempt to negotiate areas of evaluation for local educational agency to conduct with the child to try to resolve the issue(s). If the date of the disputed evaluation is close to the date of the child's next reevaluation, the ARC may recommend that another full and complete evaluation be conducted by the district.

4. A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagree.

34 CFR 300.502 (b)(1)

707 KAR 1:340 Section 2(6)

5. The local educational agency may ask for the parent's reasons why he or she objects to the local educational agency's evaluation; however, the parent shall not be required to respond and the local educational agency shall not delay its action under 707 KAR 1:340 Section 2 while waiting for a response from a parent.

34 CFR 300.502 (b)(4)

707 KAR 1:340 Section 2(4)

Criteria for Independent Educational Evaluation.

If an independent educational evaluation (IEE) is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner shall be the same as the criteria the local educational agency uses when it initiates an evaluation. Aside from these criteria, the local educational agency shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.

34 CFR 300.502 (e)(1-2)

707 KAR 1:340 Section 2 (5)

If a parent requests an independent educational evaluation, the Director will provide information to the parent about where an independent educational evaluation may be obtained and the local educational agency's applicable criteria for independent educational evaluations.

34 CFR 300.502 (a)(2).

707 KAR 1:340 Section 2(2)

Cost of Independent Educational Evaluation

If the local educational agency initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the local educational agency's evaluation is appropriate, the parent still shall have the right to an independent evaluation, but not at public expense.

34 CFR 300.502 (b)(3)

707 KAR 1:340 Section 2(7)

If a hearing officer, as a part of a due process hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

34 CFR 300.502 (d)

707 KAR 1:340 Section 2(9)

Results of Independent Educational Evaluation

If the parent obtains an independent educational evaluation at public or private expense and it meets the local educational agency's criteria, the results of the evaluation will be considered by the ARC in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child.

34 CFR 300.502 (c)(1)

707 KAR 1:340 Section 2(8)

Chapter 5 – ELIGIBILITY DETERMINATION

A. ARC REVIEW OF EVALUATION INFORMATION

Analysis of Data

Upon analysis of intervention and assessment data, the ARC will determine whether the child is “a child with a disability” defined in 707 KAR 1:280 to the extent that specially designed instruction is required in order for the child to benefit from education. The local educational agency will provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

34 CFR 300.306 (a)(1-2)

707 KAR 1:310 Section 1(1)

Decision-making Procedure

At the ARC meeting to discuss eligibility, the ARC Chairperson or other ARC member will describe the decision making process for eligibility determination which may include the following steps:

1. Review and analysis of all evaluation procedures, tests, records, and reports from the full and individual evaluation;
2. Comparison of results of evaluation data with the eligibility criteria of the suspected disability to determine the presence of a disability or disabilities;
3. Determination of whether sufficient information is available to make an eligibility determination;
4. Specifying the influence of relevant determinant factors;
5. Determining the adverse effect of the disability upon educational performance;
6. Completion of the eligibility report(s) to document the ARC decisions; and
7. If eligibility is confirmed, discussion of the development of the IEP.

Sources of Information

In making eligibility determinations, the local educational agency will draw upon information from a variety of sources, which may include:

1. response to scientific, research-based interventions;
2. vision, hearing, and communication screenings;
3. parental input;
4. aptitude and achievement tests;
5. teacher recommendations;
6. physical condition;
7. social or cultural background;
8. adaptive behavior; or
9. behavioral observation.

34 CFR 300.306 (c)(1)(i)

707 KAR 1:310 Section 1(3)

The local educational agency will ensure that information obtained from all of these sources, as appropriate for each student, is documented and carefully considered.

34 CFR 300.306 (c)(1)(ii)

707 KAR 1:310 Section 1(4)

Determinant (Exclusionary) Factors

A child shall not be determined to be eligible if the determinant factor for that eligibility determination is:

1. a lack of appropriate instruction in reading including the essential components for reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. Section 6301;
2. a lack of appropriate instruction in math; or
3. limited English proficiency and the child does not otherwise meet eligibility criteria.

34 CFR 300.306 (b)

707 KAR 1:310 Section 1(2)

The ARC will consider the determinant factors for each suspected disability area. For a child to be eligible for a disability, the ARC must conclude that the influence of the determinant factor(s), if present, is minimal, and that the child meets eligibility requirements when all other criteria are applied. If evaluation data collected supports the presence of one or more determinant factors, the ARC will complete the eligibility form documenting the determinant factor(s) indicating non-eligibility.

Determining Adverse Effect

“Adverse effect” means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

34 CFR 300.8

707 KAR 1:280 Section 1(2)

If the evaluation information meets the eligibility requirements for a disability, the ARC will determine that there is an adverse effect on educational performance if:

1. the disability impedes progress to the extent that educational performance is significantly and consistently below that of similar age peers.
2. the disability interferes with acquiring, developing, understanding, or applying knowledge or skills needed to be included in and progress in the general curriculum.
3. the disability affects the student to such a degree that special education and related services are needed in order to benefit from education.

Eligibility Decision

If a determination is made that a child has a disability and needs special education and related services, an IEP will be developed for the child. The summary recorder includes the ARC discussions on the Conference Summary, and the ARC documents the decision(s) on the Eligibility Report.

34 CFR 300.306 (c)(2)

707 KAR 1:310 Section 1(6)

If the ARC determines the child does not meet eligibility requirements for a disability, the ARC will document the decisions and give the parent copies of the Conference Summary and Eligibility Report stating the ARC decision(s). The ARC Chairperson files copies of the Conference Summary Action Notice in the educational record of the child.

B. ELIGIBILITY REQUIREMENTS FOR EACH DISABILITY AREA

Autism

The ARC will find that a child has the disability of “autism”, as defined, if evaluation information verifies:

1. Significant deficits in developing verbal and non-verbal communication systems for receptive, expressive, or pragmatic language (e.g., eye-to-eye gaze, facial expression, body postures, stereo-typed and repetitive use of language, idiosyncratic language).
2. Significant deficits in social interaction (participation) including social cues, emotional expression, personal relationships, and reciprocal (contributing) interaction (e.g., lack of showing/bringing or pointing out objects of interest, lack of varied spontaneous make-believe play, social imitative play at the developmental level).
3. Repetitive ritualistic behavioral patterns including insistence on following routines and a persistent preoccupation and/or attachment to objects which could include stereo-typed and repetitive motor mannerisms.
4. Abnormal responses to environmental stimuli.
5. The child's educational performance is not adversely affected primarily because the child has an emotional-behavior disability.

34 CFR 300.8 (c)(1)

Deaf-Blindness

The ARC will determine that a child has the disability of “deaf-blindness”, as defined, if evaluation information verifies:

1. A visual impairment as follows:
 - a. the visual acuity with prescribed lenses is 20/70 or worse in the better eye; or
 - b. the visual acuity is better than 20/70, and the child has one (1) of the following conditions:
 - i. a medically diagnosed progressive loss of vision;
 - ii. a visual field of 20 degrees or worse;
 - iii. a medically diagnosed condition of cortical blindness; or
 - iv. a functional vision loss.
 - c. the child requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration.
 2. A hearing loss as follows:
 - a. an average pure-tone hearing loss in the speech range (500 Hz, 1000 Hz, and 2000 Hz) 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
 - i. Deficits exist in processing linguistic information through hearing, with or without amplification.
 - ii. The hearing impairment adversely affects the educational performance of the child.
 - iii. The child is not be determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
 3. Such severe communication, developmental, and learning needs that the child cannot benefit from programs designed solely for children with visual impairments or hearing impairments.
- 34 CFR 300.8 (c)(2)
KRS 157.200 (1)(i)
707 KAR 1:002 Section 1(21)

Developmental Delay

The ARC will determine that a child has the disability of “developmental delay” as defined if evaluation information verifies:

1. The child is between three (3) and eight (8) years of age;
2. The child has not acquired skills or achieved commensurate with recognized performance expectations for his or her age in one or more of the following developmental areas:
 - a. cognition;
 - b. communication;
 - c. motor development;
 - d. social-emotional development; or
 - e. self-help or adaptive behavior.
3. The child demonstrates a measurable, verifiable discrepancy between expected performance for the child’s chronological age and the current level of performance. This discrepancy will be documented by:

- a. scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures; or
- b. scores of one and one-half standard deviations below the mean in two (2) or more of the five developmental areas listed using norm-referenced instruments and procedures; or
- c. the professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment is used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

34 CFR 300.8 (b)

KRS 157.200 (1)(k)

707 KAR 1: Section 1(22)

Emotional-Behavioral Disability

The ARC will determine that a child has the disability of “emotional-behavioral disability” as defined if evaluation information verifies:

- 1. When compared to child’s peers/cultural reference groups, the child continues to exhibit severe deficits in social competence or academic performance:
 - a. across settings;
 - b. over a long period of time;
 - c. to a marked degree; and
 - d. after appropriate academic and behavioral interventions have proven ineffective.
- 2. If any deficit in social competence is identified, then the deficit is to the extent that it impairs personal relationships with peers or adults and it is clearly indicated that the behavior deviates from the standards for the appropriate peer and cultural reference groups.
- 3. Severe deficits in academic performance not commensurate with the student’s ability level and not solely a result of intellectual, sensory or other health factors but are related to the child’s social-emotional problem.
- 4. A general pervasive mood of unhappiness or depression.
- 5. A tendency to develop physical symptoms or fears associated with personal or school problems.
- 6. This severe deficit in social competence, appropriate behavior, and academic performance is not the result of isolated (not necessarily one) inappropriate behaviors that are the result of willful, intentional, or wanton actions.

34 CFR 300.8 (c)(4)

KRS 157.200 (1)(g)

707 KAR 1:002 Section 1(24)

Hearing Impairment

The ARC will determine that the child has a “hearing impairment” as defined if evaluation information verifies:

- 1. an average pure-tone hearing loss in the speech range (500 Hz, 1000 Hz, and 2000 Hz) of at least 25dB in the better ear; or
 - 2. an average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or
 - 3. an average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear; and
 - 4. Deficits exist in processing linguistic information through hearing, with or without amplification.
- 707 KAR 1:280 Section 1(29); KRS 157.200 (1)(d); 34 CFR 300.8 (c)(5)

Mental Disability

In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate.

707 KAR 1:310 Section 1(5)

1. The ARC will determine that the child has a “mild mental disability” as defined if evaluation information verifies:
 - 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.
 - c. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.
 - d. is typically manifested during the developmental period
2. The ARC determines that the child has a “functional mental disability” as defined if evaluation information verifies:
 - a. cognitive functioning is at least three (3) or more standard deviations below the mean.
 - b. adaptive behavior deficits are at least three (3) or more standard deviations below the mean.
 - c. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.
 - d. is typically manifested during the developmental period.

KRS 157.200 (1)(e)

707 KAR 1:002 Section 1(37)

34 CFR 300.8 (c)(6)

3. Upon reevaluation, it is not necessary to continue to meet the standard deviation deficit in adaptive behavior. The ARC will decide (1) if the disability still exists and (2) what amount or level of specially designed instruction the student needs. *Special Education Monitoring Manual*, July 1998.

Multiple Disabilities

The ARC will determine that the child has “multiple disabilities” as defined if evaluation information verifies:

1. The student has a combination of two (2) or more of the following disabilities according to the criteria in these procedures:
 - a. Autism
 - b. Emotional-behavioral disability
 - c. Hearing impairment
 - d. Mental disability
 - e. Other health impaired
 - f. Physical or orthopedic disability
 - g. Specific learning disability
 - h. Traumatic brain injury
 - i. Visual impairment
2. The multiple disabilities adversely affect the educational performance of the child to the extent that educational needs cannot be accommodated through special education programs solely for one impairment.

707 KAR 1:002 Section 1(39)

34 CFR 300.8 (c)(7)

3. A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition.

KRS 157.200 (1)(h)

Orthopedic Impairment

The ARC may determine that the child has an “orthopedic impairment” as defined if evaluation information verifies:

1. The existence of one or more of the following:
 - a. a severe orthopedic or physical impairment of bone or muscle caused by congenital anomaly, disease, injury, or accident;
 - b. an impairment caused by disease;
 - c. an impairment from other causes such as cerebral palsy, amputations, fractures, burns that cause contractures. 707 KAR 1:002 Section 1(41); 34 CFR 300.8 (c)(8); KRS 157.200 (1)(a)

2. The ARC may determine that an educationally relevant medical evaluation completed by a licensed physician is needed to verify:
 - a. the existence of a severe orthopedic or physical impairment caused by congenital anomaly, disease, injury, or accident;
 - b. the diagnosis and nature of the impairment; and
 - c. any limitations resulting from the impairment.

Other Health Impairment

The ARC may determine that the child has “other health impairment” as defined if evaluation information verifies:

1. the existence of a severe health impairment caused by chronic or acute health problems as diagnosed by a licensed medical professional or qualified mental health professional.
2. the diagnosis and nature of the health impairment.
3. the effect of the impairment resulting in:
 - a. limited strength (maintenance and endurance of fine and gross motor skills and activities); OR
 - b. limited vitality (endurance in an activity e.g. duration, intensity, and frequency over time); or
 - c. limited alertness (maintenance of focus on tasks, short attention span; highly distractible).

34 CFR 300.8 (c)(9)

KRS 157.200 (1)(b)

707 KAR 1:002 Section 1(42)

For initial eligibility, the ARC requires an educationally relevant medical statement. For reevaluation, the ARC may determine if another medical statement is required. The educationally relevant medical statement must be completed by a licensed medical professional or a qualified mental health professional and verifies:

1. the existence of a severe health impairment caused by chronic or acute health problems;
2. the diagnosis and nature of the health impairment; and
3. the effect of the impairment on the vitality, strength, or alertness, including a heightened alertness to environmental stimuli, on the child.

Speech or Language Impairment

The ARC uses the “Kentucky Eligibility Guidelines for Students with Speech-Language Impairment – Revised” to guide the eligibility decision. The ARC may determine that the child has a “speech/language disability” as defined if evaluation information verifies:

1. The student has a disorder in one or more of the following:
 - a. fluency
 - b. speech sound production
 - c. language
 - d. voice

34 CFR 300.7 (c)(11)

KRS 157.200 (1)(c)

707 KAR 1 Section 1(60)

Speech and language services may be provided as a related service, required for the implementation of the IEP. If speech is a related service, the ARC will complete a determination of eligibility for speech or language impairment. The ARC determines whether speech or language as a related service is required to assist the child to benefit from special education.

Traumatic Brain Injury

The ARC will determine that the child has a “traumatic brain injury” as defined if evaluation information verifies:

1. The existence of a traumatic brain injury and the diagnosis and extent of injury, including the possible effect on educational performance.
2. Educationally relevant evaluation data verifies impairment in at least one or more of the identified areas.
3. Brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not considered a traumatic brain injury in accordance with this definition.
34 CFR 300.8 (c)(12)
KRS 157.200 (1)(l)
707 KAR 1:002 Section 1(63)
4. For initial eligibility, the ARC requires an educationally relevant medical evaluation. For reevaluation, the ARC may determine if the medical statement is required. The educationally relevant medical evaluation must be completed by a licensed medical professional and verifies the:
 - a. existence of a traumatic brain injury caused by chronic or acute health problems;
 - b. diagnosis and extent of the brain injury; and
 - c. possible effect of the impairment on educational performance.

Visual Impairment

Visually disabled means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils.

KRS 157.200 (1)(j)

The ARC may determine that a child has the disability of “visual impairment” if evaluation data verifies:

1. the visual acuity with prescribed lenses is 20/70 or worse in the better eye; or
2. the visual acuity is better than 20/70, and the child has one (1) of the following conditions:
 - a. a medically diagnosed progressive loss of vision;
 - b. a visual field of 20 degrees or worse;
 - c. a medically diagnosed condition of cortical blindness; or
 - d. a functional vision loss.
3. the child requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration.

34 CFR 300.8 (c)(13)

707 KAR 1:002 Section 1(65)

Evaluation/Eligibility Procedures for Children with Specific Learning Disabilities.

Specific means a disorder in one or more of the psychological processes primarily involved in understanding or using spoken or written language which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical abilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. The term does not include a learning problem that is the direct result of:

1. a hearing impairment;
2. visual, physical, mental, or emotional-behavioral disabilities; or
3. environmental, cultural, or economic differences.

34 CFR 300.309 (a)(3)

34 CFR 300.8 (c)(10)

KRS 157.200 (1)(f)
707 KAR 1:002 Section 1(59)
707 KAR 1:310 Section 2(4)

ARC MEMBERSHIP FOR DETERMINING A SPECIFIC LEARNING DISABILITY

The determination of whether a child suspected of having a specific learning disability is a child with a disability and whether the specific learning disability adversely affects educational performance shall be made by the child's ARC. The ARC shall also include other professionals, relative to the area(s) of concern, such as a school psychologist, speech-language pathologist, or educational specialist. An ARC convened to discuss a child with a suspected or documented specific learning disability shall be collectively qualified to:

1. conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, or social-emotional development;
2. interpret assessment and intervention data and apply critical analysis to that data;
3. develop appropriate educational and transitional recommendations based on the assessment data; and
4. deliver and monitor specially designed instruction and services to meet the needs of a child with a specific learning disability.

34 CFR 300.308 (b)
707 KAR 1:310 Section 2(1)

REQUIRED DATA.

For a child suspected of having a specific learning disability, the ARC must consider, as part of the evaluation, data that demonstrates that:

1. prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, including that the instruction was delivered by qualified personnel; and
2. data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parent.

34 CFR 300.309 (b)
707 KAR 1:310 Section 2(6)

ELIGIBILITY DETERMINATION.

The ARC may determine a child has a specific learning disability if:

1. the child is provided with learning experiences and instruction appropriate for the child's age or state-approved grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303; and
2. the child does not achieve adequately for the child's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:

- 707 oral expression;
- 708 listening comprehension;
- 709 written expression;
- 710 basic reading skills;
- 711 reading fluency skills;
- 712 reading comprehension;
- 713 mathematics calculation; or
- 714 mathematics reasoning.

3. the child fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303 in one or more of the areas identified in 707 KAR 1:310 Section 2 (3) when assessed based on the child's response to scientific, research-based intervention; or
4. the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development, that is determined by the ARC to be relevant to the

identification of a specific learning disability, using appropriate assessments consistent with 707 KAR 1:300, Section 4.

34 CFR 300.309 (a)(1).

707 KAR 1:310 Section 2(3)

5. The term does not include a learning problem that is the direct result of:
 - a. a hearing impairment;
 - b. visual, physical, mental, or emotional-behavioral disabilities; or
 - c. environmental, cultural, or economic differences.

34 CFR 300.8 (c)(10)

34 CFR 300.309 (a)(3)

KRS 157.200 (1)(f)

707 KAR 1:280 Section 1(59)

707 KAR 1:310 Section 2(4); 34

WRITTEN DOCUMENTATION OF A SPECIFIC LEARNING DISABILITY

The ARC will develop documentation of a specific learning disability containing a statement of:

1. whether the child has a specific learning disability;
2. the basis for making that determination;
3. the relevant behavior noted during the observation;
4. the relationship of that behavior to the child's academic functioning;
5. the educationally relevant medical findings, if any;
6. whether the child does not achieve commensurate with the child's age and ability;
7. whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas described in 707 KAR 1:310 Section 2 (3), that require special education and related services; and
8. the determination of the ARC concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; environmental, cultural factors; economic disadvantage; or limited English proficiency on the child's achievement level; and
9. the instructional strategies used and the student-centered data collected based on the child's response to scientific, research-based intervention.

34 CFR 300.311 (a) (1-6)

707 KAR 1:310 Section 2(8)

This documentation shall include notification to the child's parents concerning the policies regarding:

1. the amount and nature of student performance data that is collected and the general education services that are provided;
2. strategies for increasing the child's rate of learning; and (c) the parents' right to request an evaluation.

34 CFR 300.311 (a)(7)

707 KAR 1:310 Section 2(9)

Each ARC member shall certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusions, the team member shall submit a separate statement presenting the member's conclusions.

34 CFR 300.311 (b)

707 KAR 1:310 Section 2(10)

Chapter 6 – INDIVIDUAL EDUCATION PROGRAM

A. RESPONSIBILITY FOR SERVICES

Students Eligible for Development of an IEP

The local educational agency will ensure that an IEP is in place at the beginning of each school year for every student with a disability who is age three (3) to twenty-one (21) years old and is eligible for special education and related services. This includes students enrolled in the local educational agency, students who are placed by the local educational agency in a private school, and parentally-placed students attending private school within the local educational agency district.

34 CFR 300.323 (a),(b)

34 CFR 300.325 (a)

707 KAR 1:320 Sections 1(1), (3), (7)

The ARC members do **not** develop an IEP when a child:

1. has been evaluated and the ARC has determined that the child does not meet eligibility for a disability under IDEA;
2. has a disability, but that disability does not adversely affect the educational performance of the child; or
3. has an IEP, developed within the last 12 months, that meets the needs of the child.

Timing of IEP Development and Implementation

The Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, shall ensure that an IEP:

1. is in effect before specially designed instruction and related services are provided to a child with a disability;
2. is implemented as soon as possible following an ARC meeting. "As soon as possible following an ARC meeting" allows for delays in implementation that include:
 - a. meetings held during summer break;
 - b. developing an IEP for a child who is not yet three (3) years of age;
 - c. circumstances that require a short delay (e.g., working out transportation arrangements, within the next grading period or other natural break in school instruction); or
 - d. awaiting parent consent for the initial provision of services.

34 CFR 300.323 (c)

707 KAR 1:320 Section 1(4)

3. The Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, shall ensure that an IEP will ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

34 CFR 300.103 (c)

707 KAR 1:320 Section 1(5)

IEP Accessibility. The local educational agency will ensure that:

1. the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;
2. prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and
3. the specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.

34 CFR 300.323 (d) (1-2)

IEP Format

Each ARC will use the standard form provided by the local educational agency for recording the content of the IEP.

The local educational agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but staff must advise the parents at the outset of the meeting that the services proposed by the local educational agency are merely recommendations for review and discussion with the parents.

34 CFR Part 300 Appendix A, Q.32

B. PRESCHOOL TRANSITION

The local educational agency Participation in Transition from Early Intervention Program

An IEP shall be in place for all eligible children aged three (3) through five (5). If a child's birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin. For preschool age children with disabilities, the local educational agency will ensure a smooth and effective transition from the early intervention program to preschool. The local educational agency will participate in transition planning conferences for children with disabilities served by early intervention programs.

34 CFR 300.101 (b)

34 CFR 300.321 (f)

34 CFR 300.323 (b)

707 KAR 1:300 Section 1(2-3)

707 KAR 1:320 Section 1 (7)

Transition Planning Conference

In the case of a child who may be eligible for preschool services under Part B of IDEA, with the approval of the parent of the child, the child's service coordinator may convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive.

34 CFR 303.148 (b)(2) (i)

Early Intervention Programs planning process involves the current service providers, the family of the child, and a representative of local educational agency. The Pre-school ARC Chair participates in meetings related to transitional planning when early intervention program representatives contact local educational agency about a child who may need preschool special education services. During the meeting, the Preschool ARC Chair explains to the parent that services are available through local educational agency and asks the parent if continued services are wanted. The Preschool ARC Chair explains that not all children receiving early intervention services are eligible for special education and related services.

The local educational agency participates in meetings initiated by early intervention service providers to plan for a child's transition from the early intervention program to preschool special education services available through local educational agency. If the parent of a preschool age child chooses to pursue services for a child, local educational agency implements a plan for the child's programmatic transition to local educational agency services including:

- 1 when the child will be referred to local educational agency;
- 2 when the parent will register the child to attend local educational agency;
- 3 when the service provider will transmit child evaluation data to local educational agency;
- 4 the timeframe for the ARC meeting to determine if evaluation information is adequate and if the child is eligible for special education and related services; and
- 5 how the early intervention service provider will assist in making the transition from the early intervention program to local educational agency.

The Preschool ARC Chair keeps a copy of the transition conference summary and/or IFSP for local educational agency record of the child.

If the parent of a preschool age child chooses to pursue services, local educational agency arranges an ARC meeting according to local educational agency procedures governing Notice and ARC meetings.

If the parent chooses not to continue services for the eligible child, local educational agency involvement in the Early Intervention Program transitional planning process ends. Annually, the Director notifies the parent of the availability of preschool special education and related services until the child enters local educational agency primary program. The Director records the parent's decision and child information on the Intake Information form and enters the information in the Child Tracking System. The Intake Information form and copies of annual notices are filed in the education record of the child.

In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive.
34 CFR 303.148 (b) (2) (ii)

C. CONDUCTING AN ARC MEETING

Review of Procedural Safeguards with Parent

At the beginning of each ARC meeting, the chairperson offers to review a copy of the Procedural Safeguards document with parents and responds to parent questions.

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

Reaching ARC Consensus/Dissenting Members

CONSENSUS. The ARC members will attempt to reach consensus when developing, reviewing or revising an IEP. ARC members reach consensus through agreement on an issue or by negotiating a compromise to which all members agree. Before any decision is recorded on the IEP form, the ARC Chairperson will summarize the decision, and determine the level of agreement within the ARC.

DISSENT REGARDING EXISTING IEP

If the parent and local educational agency personnel cannot reach consensus on a component while reviewing or revising an IEP:

1. The ARC may develop an interim course of action in terms of services to which both parties can agree;
2. The ARC Chairperson will advise the parent of the right to resolve differences through due process procedures; and
3. The summary recorder will summarize the points of disagreement and the interim course of action in the Conference Summary.
4. If the ARC cannot reach consensus on an interim measure, the last agreed upon IEP will remain in effect until the disagreement is resolved. The ARC will reconvene at an agreed upon time and date unless mediation or a due process hearing is requested or a complaint is filed.
5. If the ARC members do not complete review and revision of the IEP, this will be documented on the Conference Summary and the ARC will schedule another meeting at an agreed upon date and time, prior to the annual review date.
6. (v) If mediation or a due process hearing is initiated local educational agency will not change the IEP or placement of the child unless the parent and local educational agency agree.
1997 IDEA, 34 CFR Part 300 Appendix A, Q. 9 (2004)

D. DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM

IEP Considerations and Content.

The ARC will consider in the development of an IEP:

1. the strengths of the child and the concerns of the parents for enhancing the education of their child;
2. the results of the initial or most recent evaluation of the child;
3. as appropriate, the results of the child's performance on any general state or district-wide assessments program; and (iv) the academic, developmental, and functional needs of the child.

34 CFR 300.324 (a)(1)

707 KAR 1:320 Section 5(1)

Development, review, and revision of the IEP includes:

1. prioritizing needs, and developing goals and benchmarks/objectives;
2. specifying the special education and related services, supplementary aids and services, program modifications, assessment modifications, and supports for school personnel;
3. determining the extent of participation with non-disabled children in academic, nonacademic, and extracurricular activities;
4. determining beginning dates, frequency, location, and duration of services; and,
5. determining the method for reporting progress toward the IEP goals and objectives, and a date for annual review of progress.

The ARC will not be required to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

34 CFR 300.320(d)(2).

707 KAR 1:320 Section 5(6)

Identifying Information Regarding the Child

The IEP will contain identifying information, which should include the following:

1. name (first, middle and last name of child);
2. date of birth (month, day, and year);
3. identification number;
4. school implementing IEP
5. home school (school the child would attend if enrolled in school and not disabled);
6. grade level; and
7. date IEP completed (when ARC members agree all components of the IEP are complete).

Present Levels of Achievement

The IEP for each child shall include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum, as provided in the Kentucky Program of Studies, 707 KAR 3:303, or for preschool children, how the disability affects the child's participation in appropriate activities.

34 CFR 300.320 (a)(1)

707 KAR 1:320 Section 5(7)(a)

The ARC will describe the child's performance in the areas of: general intelligence; communication; academics; health, vision, hearing, and motor; social and emotional, vocational and transition by:

1. using student performance data (state wide assessment information), evaluation information, and ongoing progress data;
2. reviewing curriculum documents to determine the child's performance within the curriculum;
3. indicating the areas in which the student is performing commensurate with peers;
4. determining how the child's disability affects involvement and progress in the Kentucky POS;

5. determining the child's unique needs to prepare the child for further education, employment, and independent living.

Developing Measurable Annual Goals, Including Benchmarks and/or Objectives

The IEP for each child shall include a statement of measurable annual goals, including academic and functional goals, designed to:

1. meet the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the Kentucky Program of Studies, 707 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities; and
1. meet the child's other educational needs that result from the disability.

34 CFR 300.320 (a) (2)

707 KAR 1:320 Section 5 (7) (b)

The ARC will review the Present Levels to prioritize the skills and/or content knowledge most important for the student. The ARC will consider:

1. the Kentucky Program of Studies
2. local educational agency graduation requirements, when relevant and appropriate
3. student strengths and interests
4. the amount of time left in school
5. behaviors that appear most modifiable
6. parent, teacher, and student concerns
7. skills needed to make progress towards the student's postsecondary goal(s)

Based on the prioritized areas, the ARC will develop measurable goals using "Kentucky's Learning Goals and Academic Expectations", the Kentucky Program of Studies to determine the focus for: the student's instruction; meeting the child's other educational needs related to the student's disability; and meeting the child's needs as they relate to progress towards postsecondary goal(s).

Methods of Measurement

The IEP will include a statement of how the child's progress toward meeting the annual goals will be measured, as determined by the ARC.

734 CFR 300.320(a)(3)(i)

07 KAR 1:320 Section 5(13)(a)

Consideration of Special Factors

The ARC will review the IEP and consider any special factors for the child (i.e., behavior concerns, Limited English Proficiency, blind/visually impaired, communication needs, deaf/hearing impaired and assistive technology needs).

An ARC shall:

1. in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies and supports, to address that behavior;
2. in the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
3. in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
4. consider the communication needs of the child;

5. in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode: and
6. consider whether the child requires assistive technology.

All these factors shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.
34 CFR 300.324 (a)(2)
KRS 158.282
707 KAR 1:320 Section 5(2-3)

Once the ARC has considered all of these factors, the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).
34 CFR 300.324 (a)(2)
707 KAR 1:320 Section 5(4)

Specially Designed Instruction, Supplementary Aids and Services, Assessment Modifications, Related Services, Program Modifications, and Support for School Personnel

IMPLEMENTERS. The ARC will assign at least one person, listed by title/role, to plan and carry out specially designed instruction to help the child achieve the benchmarks/objectives in the IEP. ARC members will select each implementer based on the services described and the qualifications needed for providing the service. The implementer, who is qualified to deliver instruction, will be responsible for instructional planning as well as collecting, maintaining and analyzing progress information.

REQUIRED STATEMENTS. An IEP will include a statement of the specially designed instruction and related services and supplementary aids and services based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child. There will also be a statement of the program modifications and supports for school personnel that will be provided for the child to:

1. advance appropriately toward attaining the annual goals;
2. be involved and make progress in the general curriculum;
3. participate in extracurricular and other nonacademic activities; and
4. be educated and participate with other children with or without disabilities.

34 CFR 300.320 (a)(4)
707 KAR 1:320 Section 5(8)

The local educational agency will ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, career and technical education, and other educational services.

34 CFR 300.107 (a)
707 KAR 1:290 Section 4

SPECIALLY DESIGNED INSTRUCTION

1. Specially-designed instruction means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies. The ARC determines the appropriate adaptations needed in the content, methodology, or delivery of instruction to ensure access of the child to the general curriculum.
KAR 1:280 Section 1(58)

2. Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, if required to assist a child with a disability to benefit from special education.
34 CFR 300.43 (b)
707 KAR 1:320 Section 7(3)

SUPPLEMENTARY AIDS AND SERVICES.

The ARC determines which supplementary aids and 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.
707 KAR 1:280 Section 1(61)

PARTICIPATION IN STATE-WIDE ASSESSMENT.

An IEP shall contain a statement of any individual accommodations to be provided the child in order to participate in the state or district-wide assessment. These accommodations will be based on the requirements contained in 703 KAR 5:070, "*Inclusion of Special Populations in the State Required Assessment and Accountability*".

34 CFR 300.320 (a)(6)(i)
707 KAR 1:320 Section 5(10)

The local educational agency will include children with disabilities in the state-wide assessment as provided in 703 KAR Chapter 5.

34 CFR 300.320 (a)(6)(i)
707 KAR 1:320 Section 9(2)

If the ARC determines that the child meets the criteria for participation in the alternate portfolio, as provided in 703 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision. 34 CFR 300.320(a)(6)(ii)
707 KAR 1:320 Section 5(11)

RELATED SERVICES

If specially designed instruction alone will not facilitate progress toward the IEP goals, benchmarks and/or objectives, the ARC documents the related service(s) that:

1. relate directly to the specially designed instruction needed for the student to make progress toward annual goals;
2. are required for the child to benefit from special education;
3. facilitate access to public school; and
4. promote education and participation with other students, with or without disabilities.

Related services means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

Related services also means school health services and school nurse services, social work services in school, and parent counseling and training.

"Related services" do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device.

The definition of "related services" does not:

1. limit the responsibility of the LEA to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school;
 2. prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly; or
 3. limit the right of a child with a surgically implanted device to receive related services that are determined by the ARC to be necessary for the child to receive FAPE.
- 707 KAR 1:280 Section 1(51)

If the ARC determines that a student needs a related service in order to facilitate movement from school to post school activities (that is, the related service is needed as a transition service), the ARC will document this service as a related service. The ARC will identify the responsible agency to provide the related services.

SUPPORTS FOR SCHOOL PERSONNEL AND PROGRAM MODIFICATIONS

The ARC determines and documents the supports for school personnel necessary to implement the child's IEP which may include specialized training or the use of school staff. The ARC determines and documents the program modifications necessary to implement the child's IEP which may include individualized selection of related arts or elective classes.

ASSISTIVE TECHNOLOGY SERVICES AND DEVICES

The local educational agency will ensure that assistive technology devices or assistive technology services, or both as defined in 707 KAR 1:280(3) or (4) are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services. 34 CFR 300.105(a)
707 KAR 1:290 Section 7(1)

On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.

34 CFR 300.308(b)
707 KAR 1:290 Section 7(2)

Beginning Dates, Duration, Frequency, and Location of Services

An IEP will include the projected date of the beginning of the services and modifications listed on the IEP and the anticipated frequency, location (whether regular or special education), and duration of the services and modifications.

34 CFR 300.320 (a)(7)
707 KAR 1:320 Section 5(12)

The amount of a special education or related service to be provided to a child may be stated in the IEP as a range only if the ARC determines that stating the amount of services as a range is necessary to meet the unique needs of the child (e.g. it would be appropriate for the IEP to specify, based upon the IEP team's determination of the student's unique needs, that particular services are needed only under specific circumstances, such as the occurrence of a seizure or of a particular behavior). A range may not be used because of personnel shortages or uncertainty regarding the availability of staff.
1997 IDEA; 34 CFR Part 300 Appendix A, Q. 35

Participation in the General Education Program

An IEP will contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes.

34 CFR 300.320(a)(5)
707 KAR 1:320 Section 5(9)

Physical Education

The ARC will decide, based on data collected and the Present Level descriptions in the IEP, if the child is to receive physical education in the general education classes, with or without supplementary aids and services, or specially designed physical education. If goals or benchmarks/objectives address physical education, then the local educational agency will make available to every child with a disability:

1. physical education services, specially designed if prescribed in the child's IEP; or
2. the opportunity to participate in the regular physical education program available to children without disabilities.

The local educational agency will not be required to make available physical education services to a child with a disability if:

1. the child is enrolled full time in a separate facility in which case the agency responsible for the education of the child in that facility shall ensure the child receives appropriate physical education; or
2. the local educational agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

34 CFR 300.108

707 KAR 1:290 Section 6 (1-2)

Reports to Parents

An IEP will include a statement of when periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.

707 KAR 1:320 Section 5(13)(b)

34 CFR 300.320(a)(3)(ii)

Review Date

The local educational agency will ensure that the ARC: (a.) reviews each child's IEP periodically, but no less than annually, to determine whether annual goals are being achieved; and (b.) revises the IEP in accordance with 34 CFR 300.324(b)(1)(ii).

34 CFR 300.324(a)(1)

707 KAR 1:320 Section 2(6)

Transition for Students in 8th Grade or Age 14 Years

In the child's eighth-grade year or when the child has reached the age of fourteen (14) years, and in alignment with the child's Individual Learning Plan (as required by 704 KAR 3:305), or earlier if determined appropriate by the ARC, the IEP for a child with a disability will include a statement of the transition service needs of the child under the applicable components of the child's IEP that focus on the child's course of study. This statement will be updated annually.

707 KAR 1:320 Section 7(1)

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 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.

34 CFR 300.43
707 KAR 1:002 Section 1(62)

The ARC will annually review and revise, as needed, the statement of transition service needs which includes the child's course of study. The "course of study" means a multi-year description of coursework from the student's current school year to the anticipated exit year designed to achieve the student's desired post-school goals.

Transition Planning for Post-secondary Goals (by the child's 16th birthday)

By the child's 16th birthday, the IEP shall include:

1. appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment and where appropriate, independent living skills; and
2. the transition services (including the course of study) needed to assist the child in reaching these goals.

34 CFR 300.320 (b)
707 KAR 1:320 Section 7(2)

Transition assessment (formal or informal) is the ongoing process of collecting data on the individual's needs, preferences, and interests related to the demands of current and future working, educational, living, and personal and social environments. Transition assessment activities may include Individual Learning Plan, observations, task-analysis, surveys, interviews, interest inventories, self-determination assessments, or career aptitude assessments. The ARC uses transition assessment information to describe post-secondary goals.

If a child does not attend the ARC meeting in which post-school transition services are discussed, the child's case manager will take steps to ensure that the youth's preferences and interests are considered. This information may be gained from an interview with the student.

Based on the assessment information, the ARC will develop measurable postsecondary goals for employment, education/training, and as needed, independent living and documents these on the IEP. The ARC will also document the assessment methods used to determine the measurable post-secondary goals

Coordination with Individual Learning Plan

Beginning with the graduating class of 2012, each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the program of studies. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

704 KAR 3:305 (2)

A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies

Academic Expectations 2.36-2.38 as established in Academic expectations.

704 KAR 3:305 (4)

The ARC will discuss the ILP prior to developing or revising the IEP, including the student's course of study. The ILP and IEP will updated annually.

Inclusion of Other Agencies in Transition Planning

The ARC determines if another agency is required or appropriate for transition planning. Other agencies or services may include postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. If the ARC determines that it is appropriate for another agency to provide and/or pay for transition services, the ARC Chairperson will document on the IEP:

1. the agency that may be responsible;

2. the responsibilities of each agency, linkages, or both; and
3. a description of the transition services to be provided.

If it is determined likely that another agency may provide and/or pay for transition services as described above, a representative of that agency will be invited to the ARC meeting.

If the ARC determines another agency isn't needed for transition planning, the ARC Chairperson will document that decision on the Conference Summary.

If an agency, other than the local educational agency, fails to provide the transition services described in the IEP, the local educational agency shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP.

34 CFR 300.324 (c)(1)
707 KAR 1:320 Section 7(4)

A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of the agency.

34 CFR 300.324 (c)(2)
707 KAR 1:320 Section 7(5)

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.

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

Student Attaining the age of Majority

At least one year prior to the child reaching age of majority, the IEP shall include a statement that the child has been informed of the child's rights under 707 KAR Chapter 1, and that the rights will transfer to the child upon reaching the age of majority.

34 CFR 300.320 (c)
34 CFR 300.520
707 KAR 1:320 Section 5(14)

E. IEP COMPLETED

When all components of the IEP are complete, the ARC Chairperson will give a copy of the IEP, Conference Summary, and any other appropriate documents to the parent at no cost to the parent.

34 CFR 300.322(f)
707 KAR 1:320 Section 4(8)

If the parent does not attend the ARC meeting to develop the initial IEP, the ARC Chairperson will send a copy of the IEP, Conference Summary, and Consent for Special Education and Related Services form to the parents. The local educational agency does not implement the IEP until the signed Consent for Special Education and Related Services is received.

If the parent does not attend a meeting to review or revise the IEP, the ARC Chairperson will send a copy of the IEP and Conference Summary to the parents, and services will begin as indicated in the revised IEP without the need of any further parental consent.

F. EXTENDED SCHOOL YEAR

Purpose of Extended School Year Services (ESY)

An extended school year program continues beyond the regular school year for the purpose of maintaining the child's current skill level which, without continued instruction, would be lost or would require an inordinate time to regain than similar age peers who are not disabled who experience the same lapse in instruction. ESY services are not designed to teach new skills, prevent normal amounts of regression, or allow the child to make additional progress, but simply to maintain the student's present level of educational performance of previously learned skills and prevent excessive recoupment time.

Need for ESY

The local educational agency provides extended school year services to each child with a disability, regardless of the nature or severity of the disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis. In making this determination, the local educational agency will not:

1. limit the provision of extended year services to a particular category(s) of disability; or
2. unilaterally limit the type, amount, or duration of those services.

34 CFR 300.106

707 KAR 1:290 Section 8

Procedure for Determining Need for ESY Services

In the last four to five weeks prior to the summer break, the IEP Implementer will collect the student's progress data on only the IEP benchmarks/objectives currently being instructed. The data will indicate student performance and trends. Data will be collected according to the methods for measuring student progress identified on the IEP. The IEP Implementer may provide supportive information including narrative comments, observations, and specific samples of student work. No single criterion will be used to determine student performance on an IEP benchmark/objective.

Within the first eight weeks of school following summer break, student performance will be measured on the same benchmarks/objective using the same methods of evaluation (e.g., similar or identical prompts, portfolio entries, daily assignments, open response question, teacher made test, oral drill, performance task). The date on student work samples will be recorded (month, day and year).

Within the first eight weeks of school, the benchmarks/objectives where the student does not recoup performance will be taught again and student performance will be re-measured according to the methods of evaluation specified on the IEP until student performance is equal to the performance when the lapse in instruction began.

Based on the records of student performance, student progress data/trends 4-5 weeks prior to summer break will be compared with student performance during weeks 1-8 following the summer break.

ARC CONSIDERATION OF ESY DATA

The ARC will review the ESY data and consider the need for ESY services during the annual review of the IEP, or at any other time as requested by a member of the ARC. If the data/trends analysis indicates recoupment, the student will typically not qualify for ESY services. If the student did not recoup progress on the benchmarks/goals that were being instructed prior to the break, the ARC will consider ESY services for the skills that have not been recouped. In addition to the amount of regression and rate of recoupment, the ARC may consider special factors unique to the student that would prevent the student from benefitting from his or her educational program during the school year in the absence of ESY.

SUMMER-TO-FALL REGRESSION RECOUPMENT DATA NOT AVAILABLE

If summer-to-fall regression recoupment data is not available at the time of the child's IEP annual review, the ARC will apply similar ESY activities to a local educational agency scheduled school break: fall, December, or

spring break. If there have been no breaks in instruction, or analysis of the data fails to validate assessment of recoupment, the IEP implementers will submit the following information to determine the need for extended year services:

1. tests and observation data collected over a period of time; and
2. the opinion of one or more professionals.

Documentation on Conference Summary/Action Notice

The ARC will document whether the child with a disability meets criteria for ESY on the Conference Summary/Action Notice in the “ESY section”. The meeting recorder will document the rationale for the decision and describe the type and amount of services needed for children who qualify.

Consideration of ESY Services for Children Transitioning From 0 to 3 Programs.

In the case of a child transitioning from FIRST STEPS (Kentucky’s Early Intervention System) or from other early intervention programs, the ARC will examine the child’s current levels of skills on the IEP (which are carried over from the Individual Family Service Plan (IFSP)). The service providers or infant-toddler program the child is coming from will have records on the child’s progress on IFSP skills. If records of progress are not available, the ARC secures a statement of progress from the service providers. The criterion for determining for ESY services for the three-year old is the same as the criteria for all children and youth with disabilities.

Since ESY services are focused on maintaining the current levels of skills on the child’s IEP and not on general development, ESY services could be provided in the preschool, home, childcare center, or any other arrangement that could focus on the maintenance of skills.

Chapter 7 – PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

A. ARC DETERMINATION OF PLACEMENT.

Upon completion of the goals, benchmarks and/or objectives, specially designed instruction and supplementary aids and services, the ARC will consider the type of placement and location of services needed for IEP implementation. A child's placement shall be: (a.) determined at least annually; (b.) based on the child's IEP; and (c.) as close as possible to the child's home.

34 CFR 300.116 (b)

707 KAR 1:350 Section 1(6)

Making a Placement Decision.

(a.) In determining the educational placement of a child with a disability, the local educational agency will ensure that the placement decision is made by the ARC in conformity with the least restrictive environment provisions.

34 CFR 300.116 (a)(2).

707 KAR 1:350 Section 1(5)

The Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, will ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum shall include the alternative placements of instruction in which will be considered in the following order:

1. regular classes;
2. special classes;
3. special schools;
4. home instruction; and
5. hospitals and institutions.

34 CFR 300.115 (a), (b)(1)

707 KAR 1:350 Section 1(2-3)

B. TRANSPORTATION TO KSB OR KSD

If a child of school age is admitted for resident instruction at the Kentucky School for the Deaf (KSD) or the Kentucky School for the Blind (KSB), the district in which the child resides shall provide transportation to and from the school on a regularly scheduled basis, at weekly intervals while the child is enrolled, either by individual district or in cooperation with other school districts on a regional basis.

KRS 157.280 (4)

If a child of school age is admitted as a day school pupil for instruction at KSB or KSD, the district in which the child resides may provide transportation to and from the school on a daily basis, either by individual district or in cooperation with other school districts on a regional basis.

KRS 157.280.

The home district will make arrangements for regional transportation planning when feasible and obtain approval from the State Board of Education according to procedures provided by the Kentucky Department of Education (KDE).

Other State Agencies Responsible for Education

State agencies charged with the responsibility of providing educational services to children with disabilities within their care shall provide those services in accordance with 707 KAR Chapter 1.

34 CFR 300.118

707 KAR 1:290 Section 1(3)

The Cabinet for Health and Family Services and the Department of Juvenile Justice are state agencies responsible for providing educational services to children with disabilities. These agencies may contract with local school districts for the provision of educational services, or may hire staff to provide such services.

Contractual Provisions for Students Placed in Another Public School, Private School or Facility

If the local educational agency places or refers a child with a disability to a private school, the local educational agency will ensure that the child:

1. is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;
2. is provided an education that meets the standards of the local educational agency including general curriculum standards;
3. has all the rights of any child with a disability served by the local educational agency.

34 CFR 300.146

707 KAR 1:320 Section 8(5)

The Director will develop a contractual arrangement with a program term consistent with the beginning dates set forth in the IEP. If another program accepts a child with a disability from local educational agency, the contract will specify that the receiving program will:

1. provide special education and related services as specified on the IEP including: each implementer designs and initiates instructional plans for accomplishing IEP goals, benchmarks/objectives; each implementer monitors and collects documentation of student progress; uses measurement techniques specified in the IEP to measure progress of the goals, benchmarks/objectives; and reports progress toward achievement of goals,
2. benchmarks/objectives on an on-going basis, at least as often as reported for all students;
3. ensure that the child and parent are afforded all rights and protections under 707 KAR Ch. 1;
4. notify local educational agency of the need to initiate and conduct ARC meetings;
5. monitor and evaluate the IEP at intervals specified on the IEP;
6. forward written results of monitoring and evaluation of the IEP to the parent and local educational agency;
7. participate in ARC meetings convened by local educational agency;
8. ensure that special education and related services are provided by qualified personnel; and
9. monitor and report attendance to local educational agency at the close of each month.

Disputes between local educational agency and other agencies will be resolved according to the policies and procedures specified in Kentucky's State Plan approved under Part B of the Individuals with Disabilities Education Act.

Educational records, copies of contracts, agreements, and correspondence with the service provider are maintained by the Director.

Transportation

If the local educational agency, through an ARC, determines that a child requires placement in a special education program operated by another county or independent district or private organization, the resident local school district will assume responsibility for the payment of the costs incurred in educating the child. The school board of the school district in which any child resides will pay for his or her transportation to and from the program in the other school district or the private organization. However, if the school board of the other district or the private organization providing the program also provides transportation, the cost of transportation shall be included in the total cost.

KRS 157.280(2)

Attendance

If a local school district, under the provisions of KRS 157.360(6) enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

702 KAR 7:125 Section 11

Payment for Services

If the ARC determines that the child requires placement in a special education program operated by another county or independent district, parochial school, or a private school or facility, the local educational agency retains responsibility for payment of the costs incurred in educating the child.

If the local educational agency provides a program by contract with another county or independent district, or private organization that maintains a special education program approved by the State Board of Education, the local educational agency will determine the total cost of the special education program in accordance with a contract agreement between the agency and the local educational agency.

C. CHANGE IN ELIGIBILITY FOR FAPE.

A “change in eligibility for FAPE” means the child is either entering special education, or exiting special education by release, due to concluding special education and related services and resuming full-time general education services; graduation with a regular diploma; or exceeding the age of eligibility for FAPE.

Release from Special Education and Related Services.

The ARC will release a child when the ARC determines that the child is no longer a child with a disability as defined by 707 KAR 1:002 Section 1(9). The local educational agency will evaluate a child with a disability in accordance with 707 KAR 1:300 Section 4 before determining that the child is no longer a child with a disability.
34 CFR 300.305(e)
707 KAR 1:300 Section 4(20)

The ARC determines that the child may be released when the child:

1. can function in the general education program through services available to similar age peers who are not disabled, but without special education and related services; and
2. has reached an educational achievement level which falls within the expected performance range for similar age peers who do not have disabilities; that is, the disability no longer adversely affects their education; or
3. is no longer identified as educationally disabled (e.g., student who has had surgery to correct vision or hearing problems, students whose misarticulations have been corrected).

To determine the general education environment for the child, the ARC will identify the grade level and school the child would attend if not disabled. The Director or principal arranges for each released child to return to the school location the child would have attended if he or she had not been a child with a disability.

The ARC Chairperson will give a copy of the Conference Summary documenting its decision to the parent and make a copy available to each of the general instructional personnel who will be serving the child, and a copy will be filed in the student’s record. The ARC Chairperson will notify the Director and place the record on inactive status.

Graduation with a Diploma

To “graduate” means that a child has completed the established program of study leading to the receipt of a **regular** diploma and exits the school system. Each child with a disability who graduates is given the opportunity to participate in graduation ceremonies with peers who are not disabled.

The local educational agency is not required to conduct an evaluation as described in 707 KAR 1:300 Section 4 before termination of a child’s eligibility due to graduation from secondary school with a regular diploma.
34 CFR 300.305 (e) (2)
707 KAR 1:300 Section 4(20)

The local educational agency will provide each student who graduates or ages out of the program with a summary of the child’s academic achievement and functional performance (i.e. “Summary of Performance”) including recommendations on how to assist the child in meeting the child’s postsecondary goals. The ARC

Chairperson will assign a local educational agency staff member to prepare a Summary of Performance, in consultation with the student if possible, prior to the annual review preceding the student's expected graduation date.

34 CFR 300.305 (e) (3)

707 KAR 1:300 Section 4(21)

At a meeting prior to a youth's expected graduation date, which could be the annual review meeting, the ARC may:

1. review the youth's progress in the current program;
2. review, and revises if appropriate, the IEP and transition plan;
3. compare earned credits in the youth's education record against the requirements established by the State Board of Education to determine if the youth meets, or is scheduled to complete at the conclusion of the coming school year, the requirements for graduation;
4. determines any support or assistance the youth needs for successful participation in the commencement ceremonies (diploma in Braille, wheelchair access, etc.); and
5. provides the student with a copy of the summary of performance including any documentation the student may need to assist in meeting postsecondary goals.

Completion of an Alternative Diploma Program

The local educational agency shall evaluate a child with a disability in accordance with 707 KAR 1:300 Section 4(20) prior to the student's exit due to the completion of an Alternative Diploma (formerly Certificate of Attainment) in accordance with 704 KAR 3:305 Section 8.

A student who meets the criteria for an Alternative Diploma (formerly Certificate of Attainment), whose individualized program is established by the ARC, is eligible to participate in graduation ceremonies on the same basis as his or her peers who are not disabled and receives an Alternative Diploma without distinction of disability during the ceremony.

Prior to releasing a child with a disability who has completed an Alternative Diploma program, the local educational agency will prepare a summary, in consultation with the student, of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. The local educational agency staff will provide the student with a copy of the summary before exiting. The ARC Chairperson will notify the Director and place the record on inactive status.

At a meeting prior to a youth's expected date of completion of an Alternate Diploma, which could be the annual review meeting, the ARC may:

1. review the youth's progress in the current program;
2. review, and revises if appropriate, the IEP and transition plan;
3. determines any support or assistance the youth needs for successful participation in the commencement ceremonies (diploma in Braille, wheelchair access, etc.);
4. determines reevaluation needs; and
5. provides the student with a copy of the summary of performance including any documentation the student may need to assist in meeting postsecondary goals.

If the student is eligible to receive an Alternative Diploma (formerly Certificate of Attainment), he or she may stay in school, return to special education and related services until he or she obtains a regular diploma, ages out, or is determined not to be a child with a disability.

Exceeding the Age of Eligibility for FAPE

"Aging out" means the age of the student has exceed the age limits for continuing eligibility to a free appropriate public education provided by the local educational agency. A child will age-out in Kentucky's public school system when the student attains the age of twenty-one (21) years.

The local educational agency is not be required to conduct an evaluation as described in 707 KAR 1:300 Section 4 before termination of a child's eligibility due to exceeding the age of eligibility for a free, appropriate public education.

34 CFR 300.305(e)(2)

707 KAR 1:300 Section 4(20)

For students who...age out of the program, the local educational agency will provide the student with a summary of the student's academic achievement and functional performance including recommendations on how to assist the student in meeting the student's postsecondary goals.

34 CFR 300.305(e)(3)

707 KAR 1:300 Section 4(21);

At a meeting prior to the student's 21st birthday, which may be an annual review meeting, the ARC:

1. reviews the youth's progress in the current program;
2. reviews, and revises if appropriate, the IEP and transition plan;
3. determines the last date of services based on the youth's 21st birthday; and
4. provides the student with a copy of the summary of performance including any documentation the student may need to assist in meeting postsecondary goals.

The ARC decisions are documented on the Conference Summary. The ARC Chairperson gives a copy of the Conference Summary to the parent and files a copy in the student's record. The ARC Chairperson will notify the Director and place the student's record on inactive status.

Withdrawal Prior to Program Completion

"Withdrawal" means that the student leaves the educational system prior to completing the prescribed course of study. Withdrawal procedures are the same for a child with a disability as those for children without a disability.

The ARC Chairperson will notify the Director when the student withdraws and will place the student record on inactive status.

D. SHORTENED SCHOOL DAY OR WEEK

The board of education of the district in which the child resides shall be exempt from the requirement of attendance upon a regular public day school every child of compulsory school age who is enrolled and in regular attendance in a state-supported program for exceptional children.

KRS 159.030(1)(f)

A child with a disability whose condition warrants less than a full day or week of attendance may be exempted from compulsory attendance under KRS 159.030(1). The request for a shortened school day or week must include an application by the parent of the student supported by a written statement from the student's physician. If the ARC determines the child needs a shortened school day or week, the ARC Chairperson will notify the Director. The Director will request approval from the local board of education to grant the exemption from full day or week attendance for the child. Upon local board approval, the Director will notify the Office of Special Education and Learning Services of the local board decision.

E. TRANSFER STUDENTS

"Transfer" means that the student has left a school district's program and has enrolled in another educational program. Transfer procedures for a child with a disability are the same as those for a child without a disability.

Students Who Transfer from a Kentucky Public School District

If a child with a disability transfers between school districts within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child will be provided with a free, appropriate public education including services comparable to those described in the previous IEP. These services will be provided in consultation with the parents until KSD or KSB's ARC adopts the previous IEP or develops, adopts and implements a new IEP.

34 CFR 300.323 (e)
707 KAR 1:320 Section 6(1)

Upon enrollment the parent or eligible student will present special education records from the prior district that document:

1. the child has a disability and a current IEP;
2. the child has met Kentucky eligibility guidelines for special education and related services;
3. the transferring district provided special education/related services until the child transferred;
4. that due process requirements have been met.

If the parent or eligible student does not have appropriate documentation the ARC Chairperson will contact the previous district to verify eligibility and obtain the necessary records. If no records are available, the school will place the student in an age-appropriate general education program.

Students Who Transfer from Outside of Kentucky

If a child with a disability transfers between school districts within the same academic year from outside of Kentucky, and had an IEP in effect in another state, the child will be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services will be provided in consultation with the parents until the local educational agency conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child meets the eligibility criteria as defined in 707 KAR 1:280.

34 CFR 300.323(f)
707 KAR 1:320 Section 6(2)

Upon enrollment the parent or eligible student will present special education records from the prior district that document:

1. the child has a disability and a current IEP;
2. the transferring district provided special education/related services until the child transferred;
3. that due process requirements have been met.

If the parent or eligible student does not have appropriate documentation the ARC Chairperson will contact the previous district to verify eligibility and obtain the necessary records. If no records are available, the local educational agency will place the student in an age-appropriate general education program.

If the parent is satisfied with the current IEP and the ARC agrees that it can be implemented as written, the local educational agency will implement the current IEP as written until an evaluation and eligibility determination can be made by the ARC.

If the parent or the ARC determines that the current IEP is not appropriate or cannot be implemented as written, the ARC must develop a new IEP through appropriate procedures within a short time after the child enrolls in the school. In the event that the parents and the ARC are unable to agree upon a temporary IEP and placement, the local educational agency will implement the current IEP to the extent possible until a new IEP is developed and implemented.

The ARC chairperson will schedule an ARC meeting as soon as possible to discuss whether or not the IEP needs to be revised, based on Kentucky regulations, or will conduct an evaluation and, if the student is eligible, develop and implement a new IEP if the child meets Kentucky eligibility guidelines.

Students who Transfer During the Evaluation Process

Assessments and evaluation of children with disabilities who transfer from one school district to another in the same academic year shall be coordinated with the previous and current schools as necessary and as expeditiously as possible, to ensure prompt completion of a full evaluation.

34 CFR 300.304(c)(5)

707 KAR 1:300 Section 4(13)

The sixty (60) school-day timeline shall not apply if the child moves to the local educational agency after consent for the initial evaluation is given but before the evaluation can be completed, as long as the local educational agency is making sufficient progress to complete the evaluation and parent and the local educational agency agrees to a specific time when the evaluation shall be completed.

34 CFR 300.301(e)

707 KAR 1:320 Section 2(5)(a)

Upon receiving the records of a student who is transferring to the local educational agency during the evaluation process, local educational agency staff will review the record and contact the previous school to coordinate the completion of the evaluation.

Transmittal of Educational Records for Transfer Students

To facilitate the transition of a child who transfers, the receiving school district shall take reasonable steps to obtain the child's records, including the IEP, supporting documents, and any other records, including discipline records, relating to the provision of special education and related services. The previous school district shall take reasonable steps to promptly respond to such requests from the receiving school district.

34 CFR 300.323 (g)

707 KAR 1:320 Section 6(3)

Upon receipt of notification that a child has transferred to another school district, local educational agency personnel send copies of the education record to the receiving school district or educational agency according to district procedures. A copy of the request for information will be filed in the education records of the child and recorded on the Record of Disclosure. A local educational agency must follow procedures concerning parental consent when releasing records.

The ARC Chairperson will notify the Director of the transfer and place the child's record on inactive status.

Chapter 8 – IMPLEMENTATION AND SERVICE DELIVERY

A. IMPLEMENTORS OF THE IEP

Implementers

Implementer means person(s) including general education teachers, special education teachers, related service personnel, and others assigned responsibility for implementing services as documented on the IEP. The implementer, who is qualified to deliver instruction encompassing the IEP components of specially designed instruction, supplementary aids and services, support for school personnel, and related services, is responsible for instructional planning as well as collecting, monitoring, and maintaining student progress information.

Each person responsible for IEP implementation

1. designs and initiates instructional plans for accomplishing measurable IEP goals, benchmarks and/or objectives;
2. collects student IEP progress data;
3. maintains records of progress for each student;
4. uses progress monitoring techniques that are specified in the IEP for the goals, benchmarks/objectives being measures for instructional decision making;
5. reports progress toward measurable goals as documented on the IEP; and
6. provides feedback to students and parents.

Case Manager

“Case manager” means a teacher who is assigned the responsibility of managing student records and is assigned by the Principal and/or Director. The case manager is not required to be assigned as the implementer of the IEP, but may be an implementer on the IEP. The role of the case manager includes:

1. providing information for updating the Child Tracking System;
2. soliciting, collecting, filing and reporting information to ARC members and parents as required by policies and procedures;
3. notifying ARC members of the students’ progress and/or lack of progress toward measurable goals, and benchmarks and objectives (i.e., reporting progress to parents);
4. consulting and communicating with all IEP implementers;
5. attending ARC meetings for students who are on their caseload;
6. reporting progress data to the ARC no less than annually; and
7. performing other roles as assigned by the ARC.

The Principal and/or Director and/or case manager ensure that each implementer is made aware of their responsibilities for service delivery and documentation of student progress toward measurable goals and objectives/benchmarks.

If the student is making expected progress, the implementer continues the instructional process. If the student is falling behind or exceeding a goal(s), the implementer will communicate with the case manager, who will notify the ARC Chairperson to schedule an ARC meeting to review the progress of the student.

Parents may agree to assist in implementation but cannot be the sole implementer responsible for the delivery of services and the collection of progress data.

Paraprofessionals as Implementers

“Teacher’s aide” means an adult school employee who works under the direction of the teaching staff in performing, within the limitations of his or her training and competency, certain instructional and non-instructional functions in the school program including, but not limited to, tutoring individual pupils, leading pupils in recreational activities, conducting pupils from place to place, assisting with classroom instruction as directed by the teacher, and preparing and organizing instructional materials and equipment.

KRS 161.010

Paraprofessionals (“teacher’s aides”) may assist in implementation of a student’s IEP under the supervision and direction of the assigned implementer. The implementer may direct the paraprofessional to:

1. assist in carrying out instructional plans for accomplishing IEP measurable goals, benchmarks or objectives;
2. assist in collecting and maintaining records of progress data;

Use progress monitoring techniques that are specified in the IEP for the annual goals, benchmarks/objectives being measured.

Instructional Planning for Service Delivery

The role of the case manager is to communicate with each IEP implementer how services will be provided as designed by the ARC. Measurable annual goals, objectives/benchmarks, and services listed on the IEP are addressed through instructional planning by the implementer. The implementer is responsible for monitoring progress toward the measurable goals and services. The implementer is also responsible to provide evidence of student progress by maintaining data. The implementer uses the methods of measurement identified for each of the measurable goals, or objectives/benchmarks. The student progress toward the achievement of each measurable goal, objectives/benchmarks is reported to the ARC not less than annually.

Implementation for Service Delivery

The case manager tracks the delivery of all services and reports to the ARC Chairperson in a timely manner if any service is not being delivered in accordance with the IEP. If the ARC Chairperson and Director are unable to arrange for delivery of an identified service, the Director will contact KDE for assistance, which may include obtaining training and support in the identified area of need. The Director will maintain records (correspondence, newspaper advertisements, etc.) of efforts made to obtain needed services.

Supervision of IEP Implementation

The ARC Chairperson will ensure that local educational agency staff is responsible for the supervision and implementation of the IEP. If the ARC Chairperson finds that an IEP is not being implemented, the ARC Chairperson (for KSB and KSD, this is usually the Director of Special Education at the respective school) will contact the Director to develop an appropriate plan of action.

B. REVIEW OF THE IEP

Annual Review

The local educational agency will ensure that the ARC:

1. reviews each child’s IEP periodically, but not less frequently than 12 calendar months from the date of its development, to determine whether annual goals are being achieved, and
2. revises the IEP in accordance with 34 CFR 300.324 (b)(1)(ii) to address:
 - a. any lack of expected progress toward the annual goals;
 - b. any lack of expected progress in the general curriculum, if appropriate;
 - c. the results of any reevaluation;
 - d. information about the child provided by or to the parents;
 - e. the child’s anticipated needs;
 - f. and other matters.

34 CFR 300.324(b)(1)(ii)
707 KAR 1:320 Section 2(6)

Attendance at Annual Review Meeting

The ARC Chairperson will select and invite ARC members to the ARC meeting called for the purpose of reviewing the IEP. The ARC Chairperson will notify all members to bring a written summary of progress which is reviewed at the ARC meeting, and information about the child to be used in reviewing and revising the IEP.

The ARC members will consider student performance data, evaluation information and the progress data maintained by each implementer.

A member of the ARC may be excused from attending the meeting according to excusal procedures.

Conference Action Summary

The ARC Chairperson will ensure that the ARC discussions and decisions are documented on the Conference Action Summary and IEP, as appropriate.

Revision, Release and Re-evaluation

Based on the review of student progress information, the ARC will:

1. revise the current IEP;
2. develop a new IEP; or
3. release the student from special education in accordance with the procedures set forth in "Release from Special Education and Related Services" (see PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT) if the student no longer requires specially designed instruction and related services.

If the ARC determines the student no longer needs special education services, the ARC will discuss the need for reevaluation. If additional information is needed, the ARC will plan for the reevaluation, develop an IEP for the reevaluation period, and schedule another ARC meeting. If the ARC determines no additional data is needed, the ARC will write the Reevaluation Report, and release the student.

C. IEP ACCOUNTABILITY

Good Faith Effort.

The local educational agency will provide specially designed instruction and related services to each child with a disability in accordance with his or her IEP and shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks in the IEP.

707 KAR 1:320 Section 9(1)

"Good faith effort" means the state of mind denoting honesty of purpose, freedom from intention to defraud, and being faithful to one's duty or obligation. Black's Law Dictionary 6th Ed.

Teachers and other personnel who carry out portions of the child's IEP are informed about the content of the IEP and their responsibility regarding its implementation.

Parent's Rights.

These provisions do not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures, including mediation, complaint, and hearing procedures, if the parents feel that good faith efforts are not being made.

707 KAR 1:320 Section 9(3)

D. GRADUATION AND PROGRAM COMPLETION

No Distinction

The local educational agency grants a student with a disability a regular diploma or an Alternative Diploma as part of the graduating class, with no distinction made in the ceremonies. Each student with a disability who completes the secondary program has the opportunity to participate in graduation ceremonies on the same basis as peers who are not disabled.

Graduation with a Diploma

The ARC plans an appropriate course of study leading to graduation and a regular diploma for a student no later than age fourteen (14) according to “Post-School Transition Services” procedures (see IEP procedures). Each student with a disability in a local educational agency has an opportunity to complete high school in the same manner and following the course of study available to students who are not disabled. A local educational agency will grant a regular high school diploma to each student with a disability who meets the required graduation criteria and standards as established by the Kentucky Board of Education and the Kentucky General Assembly.

A local educational agency’s personnel will not act in any way to prevent a student with a disability from obtaining a regular high school diploma.

Determining Alternative Diploma (formerly Certificate of Attainment)

A student with a disability who meets the criteria for participation in alternate assessment is issued an Alternative Diploma upon completing a program designed by the ARC. A student is eligible for an alternate assessment and an Alternative Diploma if the ARC determines that all of the following criteria are met:

1. the student has a current Individual Education Program;
2. the student’s demonstrated cognitive ability and adaptive behavior itself prevents completion of the regular course of study even with program accommodations;
3. the student’s current adaptive behavior requires extensive direct instruction in multiple settings to accomplish the application and transfer of skills necessary in school, work, home, and community environments;
4. the student’s inability to complete the course of study may not be the result of excessive or extended absences; or it may not be primarily the result of visual or auditory disabilities, specific learning disabilities, emotional-behavioral disabilities, or social/cultural/economic differences;
5. the student is unable to apply or use academic skills at a minimal competency level in natural settings (i.e., home, community, or work site) when instructed solely or primarily through school-based instruction;
6. the student is unable to acquire, maintain, or generalize skills, and demonstrate performance without intensive, frequent, and individualized community-based instruction; and
7. the student is unable to complete a regular diploma program even with extended schooling and program accommodations.

The ARC will document the decisions on the “*Participation Guidelines for the Alternate Assessment System*” form.

Each year during the Annual Review meeting, the ARC will review the alternate assessment format decision. The ARC may recommend changing assessment formats (alternate assessment or general assessment) based on the meeting the above criteria.

Chapter 9 – CONFIDENTIALITY

A. ACCESS RIGHTS

Education Records

The local educational agency adopts the definition of “education records” set forth in the Family Educational Rights and Privacy Act and the Kentucky Family Educational Rights and Privacy Act.

34 CFR 99.3

KRS 160.700(3)

Inspection and Review of Educational Records

The local educational agency will permit a parent to inspect and review any education records relating to his or her child that are collected, maintained, or used by the local educational agency. The local educational agency will comply with a request without unnecessary delay and before any meeting regarding an IEP, dispute resolution meeting, or due process hearing, and in no case more than forty-five (45) days after the request has been made.

34 CFR 300.613(a)

707 KAR 1:360 Section 1(1)

The local educational agency will give full access rights under the Family Educational Rights and Privacy Act to either parent, unless the local educational agency has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

34 CFR 99.4

The local educational agency will presume that a parent has authority to inspect and review records relating to his or her child unless the local educational agency has been advised under a court order that the parent does not have the authority.

34 CFR 300.613(c)

707 KAR 1:360 Section 1(3)

"Eligible student" means a student, or a former student, who has reached the age of eighteen (18) or is pursuing an education beyond high school and therefore the permission or consent required of, and the rights accorded to the parents of the student shall therefore be required of, and accorded to, the student.

KRS 160.700 (4)

Explanation and Interpretation of Records

The right to inspect and review education records shall include:

1. the right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records (i.e. sign language or foreign language interpreter).
2. the right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
3. the right to have a representative of the parent inspect and review the records.

34 CFR 300.613 (b)

KRS 160.715 (1)

707 KAR 1:360 Section 1 (2)

If the parent requests an explanation of the records, the appropriate staff member (e.g., Director, school psychologist, counselor, or special education teacher) explains and interprets the records and answers any questions the parent may have.

If the parent requires interpretation of the child's educational records, the Director will be notified promptly by the staff member contacted by the parent. Within a reasonable period of time, the Director will arrange for the records to be interpreted orally (in-person or audio-recorded) or in writing if necessary.

Test Protocols

Copyrighted test protocol and raw data generated by evaluators are educational records which may be reviewed by parents. In order to comply with federal copyright laws and protect test validity and security, the local educational agency will maintain test protocols in secure areas and will not release copies to others, including parents.

IDEA Interpretation for 34 CFR 300.562 (IDEA 1997)

Representative of Parent to Inspect and Review Records

The parent may authorize an individual to serve as the parent's representative to inspect and review the records by completing and signing an "Authorization of Use and Disclosure of Information" prior to inspection of the records.

Record of Disclosure

The local educational agency will keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1 (except access by parents and authorized employees of the local educational agency which will be kept in the student's due process folder as long as the records are maintained). The record will include:

1. the name of the party;
2. the date access was given; and
3. the purpose for which the party is authorized to use the records.

34 CFR 99.32

34 CFR 300.614

707 KAR 1:360 Section 2

RECORDS ON MORE THAN ONE CHILD

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of only that specific information.

34 CFR 99.12

34 CFR 300.615

707 KAR 1:360 Section 3

TYPES AND LOCATION OF INFORMATION

The local educational agency will provide parents, on request, a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the local educational agency. The list will specify the type of information, (e.g., due process folder, speech folder, psychological/evaluator records), the location (specific school or office) and contact person where each record is located.

34 CFR 300.616

707 KAR 1:360 Section 4

FEES FOR COPYING RECORDS

The local educational agency may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 if the fee does not effectively prevent the parent from exercising his right to inspect and review the records. The local educational agency will not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

34 CFR 99.11

34 CFR 300.617

KRS 160.715(2)

707 KAR 1:360 Section 5

The parent will receive a copy of each evaluation and reevaluation report, each eligibility report, each IEP and each Conference Summary Action Notice following the ARC meeting when each specific document is initially discussed or developed. Initial copies are provided to the parent free of charge.

Record Amendment

REQUEST TO AMEND INFORMATION IN EDUCATION RECORDS

A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 is inaccurate, misleading, or violates the privacy or other rights of the child may request the local educational agency to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the local educational agency will respond within ten (10) school days.

34 CFR 99.20(a)

34 CFR 300.618(a)

KRS 160.730(1)

707 KAR 1:360 Section 6(1)

"Record amendment" refers to changing, deleting, or destroying information in the educational records of a child or youth.

Upon receipt of a written request from a parent to amend his or her child's records, the Director, and other local educational agency personnel as needed, will schedule a meeting with the parent to discuss the parent's request and review the record. The written parental request must include the date of the request, and the reason for the request.

CONSIDERATION OF REQUEST

The local educational agency will decide whether to amend the information in accordance with the parent's written request within a reasonable period of time of receipt of the request.

34 CFR 99.20(b)

34 CFR 300.618(b)

If, after the meeting, the local educational agency decides to amend the information, the Director will inform the parent in writing of the decision and will amend the record as agreed upon by the parent and the local educational agency.

If the local educational agency decides to refuse to amend the information in accordance with the request, it will inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.619.

34 CFR 99.20(c)

34 CFR 300.618(c)

702 KAR 1:40 Section 1

REQUEST FOR RECORD AMENDMENT HEARING

The local educational agency will, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1:140 shall apply.

34 CFR 99.21(a)

34 CFR 300.619

707 KAR 1:360 Section 6(2)

The local educational agency will arrange for a hearing to be held within thirty (30) days after the request for hearing. The hearing will be conducted by a hearing officer who is a disinterested party and is a certified official of the local educational agency.

34 CFR 99.22(a-b)
702 KAR 1:140 Section 2 (2)

A “disinterested party” is a person who: (1) will not benefit or suffer if the decision is for the child and against the local educational agency, or for the local educational agency and against the child; and (2) has no direct responsibility or authority for supervision of the child or personnel involved with the child.

The hearing officer will notify the parents of the time and place of the hearing at least seven (7) calendar days in advance of the hearing date and will issue a written decision to the parties within ten (10) business days following the date of the hearing.

CONDUCT OF RECORD AMENDMENT HEARING

Because the hearing will be private, persons other than the student, parent(s), witnesses, and counsel will not be admitted into the hearing. The hearing officer will hear evidence from the school staff and the student's parent(s) or guardian to determine any points of disagreement regarding the records. The student's parent(s) or guardian will be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's educational records. The parent(s) or guardian may be assisted by one (1) or more individuals, including an attorney.

34 CFR 99.22(d)
702 KAR 1:140 Section 2(3)(4) and (5)

Parents and representatives of the local educational agency will be given the opportunity to present witnesses, question school employees, and provide oral testimony or written evidence as to the inaccurate or misleading information in the educational records.

RESULT OF RECORD AMENDMENT HEARING

The hearing officer will make a determination in writing within ten (10) business days following the close of the hearing. The hearing officer will make a determination based solely on the evidence presented at the hearing, and will include a summary of the evidence and the reason for the decision. The parties to the hearing will be provided a copy of the hearing officer's decision.

34 CFR 99.22 (e-f)
702 KAR 1:140 Section 2(6)

If, as a result of the hearing, the hearing officer decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the local educational agency will amend the information accordingly and inform the student's parent(s) or guardian of the amendment in writing.

34 CFR 99.21(b)
34 CFR 300.620(a)
702 KAR 1:140 Section 3(2)

The local educational agency maintains the documents related to the hearing separate from the educational records of the child or youth and destroys the records in accordance with destruction of information procedures

If the hearing officer decides after the hearing that the challenged information is NOT inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the local educational agency will inform the student's parent(s) or guardian of the right to place a statement in the record commenting on the contested information or stating why he or she disagrees with the decision of the hearing officer. The statement will be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the record, it shall also disclose the statement.

34 CFR 300.620(b-c)
702 KAR 1:140 Section 3(1)

B. DISCLOSURE OF EDUCATIONAL RECORDS

List of Persons Who May Have Access to Educational Records

The local educational agency will maintain, for public inspection, a current listing of the names and positions of employees within the local educational agency who may have access to personally identifiable student information.

34 CFR 300.623(d)

707 KAR 1:360 Section 8(4)

Written Parental Consent.

(a.) Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 17, parental consent shall be obtained before personally identifiable student information is:

1. disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Ch. 1; or
2. used for any purpose other than meeting a requirement under 707 KAR Ch. 1.

34 CFR 300.622(a)

KRS 160.720 (1)

707 KAR 1:360 Section 7(1)

The written consent must:

1. specify the records that may be disclosed;
2. state the purpose of the disclosure; and
3. identify the party or class of parties to whom disclosure may be made.

34 CFR 99.30(a)

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). Copies of the completed forms are maintained in the educational records of the student.

34 CFR 300.321 (b)(3)

34 CFR 300.622(b)(2)

KRS 160.720(1)

707 KAR 1:320 Section 3(4)

Disclosure without Consent

The local educational agency will not release information from education records to participating agencies without parental consent unless authorized to do so under the Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g.

707 KAR 1:360 Section 7(2)

34 CFR 300.622(a)

34 CFR 99.31

KRS 160.720(2)

Release of Education Records to another Public School District

The notice of rights to parents of enrolled students and eligible students includes a statement that the local educational agency releases the educational records, without parental consent, of a child who seeks to or enrolls in another public school district. The request for records may be made by the parent, the eligible student, or personnel of the receiving school.

Upon receipt of a request for records from the receiving district, the principal or designee will document the request on the Record of Disclosure, and provide copies (not originals) of the following special education records to the requesting public school district and place the special education record of the child on inactive status:

1. consent to Evaluate/Reevaluate;

2. consent for Specially Designed Instruction;
3. current Conference Summary Action Notice;
4. current IEP, student performance information, and data summaries;
5. current Assessment Report and Eligibility Determination;
6. initial Assessment Report and Eligibility Determination;
7. consent to bill Medicaid; and, if appropriate,
8. ESY data.

If a child transfers to another school within the local educational agency district's boundaries, the entire special education record will be transferred to the receiving school.

If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency district parental consent must be obtained before any personally identifiable information about the child may be released between officials in the LEA where the private school is located and the local educational agency.
34 CFR 300.622(3)

Records Regarding Migratory Children with Disabilities

(a.) The local educational agency will shall transfer health and education records on migratory children with disabilities who move to other states.

34 CFR 300.213

707 KAR 1:290 Section 10

If local educational agency receives a request from a school or agency in another state regarding a migratory student, the principal or designee will request that the parent sign the "Authorization for Use and Disclosure of Information" before any educational records are sent.

Re-disclosure of Personally Identifiable Information

When personally identifiable information from an education record is disclosed, it is done so on the condition that the party to whom the information is disclosed will not disclose the information to another party without the prior consent of the parent or eligible student. The local educational agency will inform any party to whom disclosure is made of the requirements of this section.

34 CFR 99.33(a) (1) and (d)

Information received by the local educational agency will be used only for the purposes for which the disclosure was made.

Prior to re-disclosing any information in an education record that was obtained from another source, the local educational agency will obtain the parent or eligible student's written consent for re-disclosure which may be submitted on the "Authorization of Use and Disclosure of Information" form.

Parent Refusal to Release Information

If a parent refuses to provide consent for release of personally identifiable information necessary to provide a free appropriate public education, a party may request a due process hearing pursuant to 707 KAR 1:340 or comply with the FERPA.

707 KAR 1:360 Section 7(3)

C. CONFIDENTIALITY SAFEGUARDS

Records Security

The local educational agency will protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

34 CFR 300.623(a)

707 KAR 1:360 Section 8(1)

Persons Responsible for Ensuring Confidentiality

(a.) The local educational agency will assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.

707 KAR 1:360 Section 8(2)

34 CFR 300.623 (b)

The Director of Pupil Personnel is responsible for ensuring the confidentiality of personally identifiable information for all students. The Director is responsible for the general supervision of all educational records related to children and youth with disabilities. Building principals have responsibility for all records maintained at the building level even though teachers may have custody of the records.

Confidentiality Training

Any local educational agency employee collecting or using personally identifiable information will receive training or instruction regarding the requirements of 707 KAR 1:360.

707 KAR 1:360 Section 8 (3)

34 CFR 300.623 (c)

The local educational agency provides training for all local educational agency personnel who collect, use, or maintain personally identifiable information. Within thirty (30) calendar days prior to the start of school, all local educational agency administrative staff are trained regarding local educational agency policies and procedures for confidentiality. Within thirty (30) calendar days of the start of school, all other local educational agency personnel who have access to educational records are trained by the building principal or the principal's designee regarding local educational agency policies and procedures regarding confidentiality. When new staff members are employed during the school year, training is provided in confidentiality.

A local educational agency will provide training for volunteers and any others who may have access to personally identifiable information such as mentors, foster grandparents, student teachers, etc.

D. DESTRUCTION OF INFORMATION.

Notification

The local educational agency will inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information will be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, grades, attendance record, and classes attended, grade level completed, and year completed may be maintained without time limitations

34 CFR 300.131 (a) & (b)

707 KAR 1:370 Section 2(2)

707 KAR 1:360 Section 9

707 KAR 1:370 Section 2(2)

The Kentucky Records Retention Schedule governs the destruction of all school records, and specifies that special education records must be maintained for three years after the last activity involving special education services for the specific child.

When a local educational agency determines that educational records are no longer needed to provide services for a child with a disability, the Director notifies students and parent(s) to inform them of the date the records will be destroyed by publishing a notice in the newspaper regarding the record destruction and the date the records will be destroyed.

Parent Request for Destruction of Records

If a parent requests the destruction of educational records, the Principal or Director destroys the records in accordance with the requirements of the Kentucky State Library and Archives Records Retention Schedule. The Records Retention Schedule governs the destruction of all school records, and specifies that special

education records must be maintained for three years after the last activity involving special education services for the specific child.

If a parent requests destruction, the local educational agency does not destroy any records that have not been retained for the minimum period of time required by the retention schedule, or if there is:

1. an outstanding request to inspect or review the records;
2. an unresolved finding of noncompliance in a program or fiscal audit; or
3. a need for the records for planning and implementing an individual educational program to demonstrate compliance with applicable state and federal requirements.

If the parent of a student with disabilities requests the destruction of records, the local educational agency Representative informs the parent or eligible student that the records may be needed to establish social security benefits or other purposes prior to destruction.

E. RIGHTS OF THE ELIGIBLE STUDENT

Transfer of Rights

The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

34 CFR 300.625(b)

707 KAR 1:360 Section 10

Notice to Parents and Student

Prior to the student's eighteenth (18th) birthday, the local educational agency provides notice to the parent and the student that the rights regarding review, inspection, and disclosure of records will transfer to the student at the age of eighteen (18). The notice and documentation is maintained the student's due process file.

Prohibition on Disclosures

The local educational agency does not disclose educational records of a youth over the age of eighteen (18) to the parent without: (a.) the student's written consent; (b.) a court order; or (c.) proof that the student is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954.