

# **Kentucky Administrative Regulations**

## **Special Education Programs**

**707 KAR 1:002 – 707 KAR 1:380**

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### **For Informational Purposes Only**

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## **707 KAR 1:270. Kentucky Special Education Mentor Program.**

RELATES TO: KRS 157.197, 157.224

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(4), 157.197(1)

NECESSITY, CONFORMITY, AND FUNCTION: KRS 157.197(3) requires the Kentucky Board of Education to promulgate an administrative regulation to establish the criteria for the Kentucky Special Education Mentor Program. This administrative regulation establishes that criteria.

**Section 1. Definition. "Special education mentor"** means an individual with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197.

**Section 2.** (1) The Kentucky Department of Education shall assign a special education mentor to:

(a) Assist a:

1. Local school district in remedying district-wide deficiencies; or

2. Specific school in remedying school-specific deficiencies; and

(b) Obtain voluntary compliance with applicable federal and state laws and regulations before imposing sanctions under 707 KAR 1:015.

(2) The assignment shall be completed upon verification by the Division of Exceptional Children Services of compliance with the applicable federal and state laws and regulations.

**Section 3. Special Education Mentor Criteria.**

(1) An individual wishing to become a special education mentor shall submit a letter of request and curriculum vitae to the Special Education Mentor Selection Committee. An eligible individual shall be certified in an area of special education.

(2) A Special Education Mentor Selection Committee appointed by the Commissioner of Education shall be involved in development of the selection process for the special education mentors and review of the applicants. The Director, Division of Exceptional Children Services, shall serve as committee chairperson. Members of the Special Education Mentor Selection Committee shall serve for a period of three (3) years and shall include:

(a) One (1) representative of the State Advisory Panel for Exceptional Children;

(b) One (1) superintendent and one (1) principal representing the Kentucky Association of School Administrators;

(c) One (1) special education teacher and one (1) regular education teacher representing the Kentucky Education Association;

(d) One (1) special education administrator representing the Council of Special Education Administrators;

(e) Two (2) parents from Kentucky's parent project funded under the Individuals with Disabilities in Education Act (IDEA), 20 USC Sections 1400-1487; and

(f) One (1) representative from a parent advocacy organization. (25 Ky.R. 1771; Am. 2153; eff. 3-1-99.)

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## **707 KAR 1:002. Definitions.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419 STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 57.220, 57.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes definitions for this chapter of administrative regulations regarding special education.

### **Section 1. Definitions.**

- (1) "**Admissions and release committee or "ARC"**" means a group of individuals described in 707 KAR 1:320, Section 3, that is responsible for developing, reviewing, or revising an individual education program (IEP) for a child with a disability.
- (2) "**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.
- (3) "**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.
- (4) "**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: (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs; (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and (f) 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.
- (5) "**Autism**" means a developmental disability significantly affecting 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.
- (6) "**Business day**" means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day as in 707 KAR 1:370, Section 1.

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(7) "**Caseload for special classes**" means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting.

(8) "**Change of placement because of disciplinary removals**" means a change of placement occurs if: (a) The removal is for more than ten (10) consecutive school days; or (b) The child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:

1. The series of removals total more than ten (10) school days in a school year;
2. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
3. 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 (1) another.

(9) "**Child with a disability**" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed in the definitions in this section for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special education and related services.

(10) "**Class size for resource classes**" means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of time set by the individual school.

(11) "**Collaboration**" means, for purposes of determining class size in 707 KAR 1:350, Section 2, a teacher of exceptional children works with children with disabilities in the regular classroom to provide specially-designed instruction and related services.

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

(13) "**Compliance**" means the obligations of state or federal requirements are met.

(14) "**Compliance monitoring report**" means a written description of the findings of an investigation, like on-site monitoring, citing each requirement found in noncompliance.

(15) "**Consent**" means: (a) 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; (b) 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; (c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and (d) If a parent revokes consent, that revocation does not negate an action that has occurred after the consent was given and before the consent was revoked.

(16) "**Controlled substance**" means a drug or other substance identified under 21 U.S.C. Section 812(c). (17) "**Core academic subjects**" means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography. (18) "**Corrective action plan or "CAP"**" means a written improvement plan describing activities and timelines, with persons responsible for implementation, developed to correct identified areas of noncompliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

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- (19) "Course of study"** means a multiyear 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.
- (20) "Day"** means calendar day unless otherwise indicated as business day or school day.
- (21) "Deaf-blindness"** means concomitant hearing and visual impairments that have an adverse effect on the child's education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.
- (22) "Developmental delay" or "DD"** means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one (1) or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help-adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and current level of performance. The discrepancy shall 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;
  - (b) Scores of one and one-half (1 1/2) standard deviations below the mean in two (2) or more of the areas listed above 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 shall be used only where normal scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.
- (23) "Education records"** means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g.
- (24)(a) "Emotional-behavioral disability" or "EBD"** means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one (1) 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.
- (b) This term does not apply to children who display isolated (not necessarily one (1)) 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.
- (25) "Enforcement"** means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.
- (26) "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.
- (27) "Free appropriate public education" or "FAPE"** means special education and related services that:
- (a) Are provided at public expense, under public supervision and direction, and without charge;
  - (b) 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;

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(c) Include preschool, elementary school, or secondary school education in the state; and  
(d) Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

**(28) "Functional"** means activities and skills that are not considered academic or related to a child's academic achievement as measured on statewide assessments pursuant to 703 KAR Chapter 5.

**(29) "Hearing impairment"**, sometimes referred to as "deaf" or "hard of hearing", means a hearing loss that:

(a) May be mild to profound, unilateral or bilateral, permanent or fluctuating, and is determined by:

1. An average pure-tone hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 25dB in the better ear;

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;

(b) Results in difficulty identifying linguistic information through hearing; and

(c) Has an adverse effect on the child's educational performance.

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

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

**(32) "IDEA"** means the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 through 1450, as amended.

**(33) "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) "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.

**(35) "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 Type Well and special interpreting services for children who are deaf-blind.

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

**(37) "Mental disability"** means that a child has one (1) of the following: (a) A mild mental disability (MMD) in which: 1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean; 2. Adaptive behavior deficit is at least two (2) standard deviations below the mean; 3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and 4. Manifestation is typically during the developmental period; or (b) A functional mental disability (FMD) in which: 1. Cognitive functioning is at least three (3) or more standard deviations below the mean; 2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean;

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3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and

4. Manifestation is typically during the developmental period.

**(38) "Monitoring"** means gathering and reviewing information to determine if a project or program meets state and IDEA requirements including the implementation of corrective action plans.

**(39) "Multiple disabilities " or "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 (1) 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.

**(40) "Native language"** means, if used in reference to an individual of limited English proficiency, the following:

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;

(b) 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

(c) 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.

**(41) "Orthopedic impairment" or "OI"** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes:

(a) An Impairment caused by a congenital anomaly such as clubfoot, or absence of some member;

(b) An Impairment caused by disease such as poliomyelitis, or bone tuberculosis; and

(c) An impairment from other causes such as cerebral palsy, amputations, and fractures or burns that causes contractures.

**(42) "Other health impairment " or "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:

(a) Is due to a chronic or acute health problem, such as acquired immune deficiency syndrome, asthma, attention deficit disorder, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette's syndrome, or tuberculosis; and

(b) Adversely affects a child's educational performance.

**(43) "Parent"** means: (a) A biological or adoptive parent of a child;

(b) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

(c) A person acting in the place of a biological or adoptive parent such as a grandparent, stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare;

(d) A foster parent if the biological or adoptive parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child;

(e) A foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational

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decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or

(f) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 6.

**(44) "Participating agency"** means a state or local agency other than the LEA that is financially and legally responsible for providing transition services to a child with a disability.

**(45) "Personally identifiable information"** means information that includes the name of the child, the child's parents, or other family member, the address of the child, a personal identifier, including 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.

**(46) "Postsecondary goals"** means those goals that a student hopes to achieve after leaving high school.

**(47) "Private school children with disabilities"** means children with disabilities enrolled by their parents in private elementary or secondary school as defined by IDEA regulations, 34 C.F.R. Part 300.13 and 300.36, and not children with disabilities enrolled in private schools upon referral by a LEA.

**(48) "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 administrative 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.

**(49) "Qualified personnel"** means personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state.

**(50) "Reasonable efforts to obtain voluntary compliance"** means active and ongoing efforts by the Kentucky Department of Education through technical assistance and negotiation to arrive at an acceptable corrective action plan and follow through on an agreed-upon corrective action plan.

**(51)(a) "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. (b) "Related services" also means school health services and school nurse services, social work services in school, and parent counseling and training. (c) "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. (d) 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.

**(52) "Sanctions"** means actions such as technical assistance, consultation, or training, that are taken by the Kentucky Department of Education in response to a LEA's failure to comply with the required standards in state and federal laws and administrative regulations.

**(53) "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.

**(54) "Serious bodily injury"** means bodily injury as defined in 18 U.S.C. Section 1365(h)(3).

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**(55) "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 who has been designated to receive services, including the location of the services and any transportation necessary that is developed in accordance with 707 KAR 1:370.

**(56) "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.

**(57) "Special education mentor"** means individuals with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197.

**(58) "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, 704 KAR 3:303.

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

**(60) "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.

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

**(62) "Transition services"** means a coordinated set of activities for a child with a disability that:

(a) 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;

(b) Is based on the individual student's needs, taking into account the child's strengths, preferences, and interests; and

(c) Includes:

1. Instruction;

2. Related services;

3. Community experiences;

4. The development of employment and other post-school adult living objectives; and

5. If appropriate, acquisition of daily living skills and functional vocational evaluation.

**(63) "Traumatic brain injury" or "TBI"** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one (1) or more areas, including:

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- (a) Cognition;
- (b) Language;
- (c) Memory;
- (d) Attention;
- (e) Reasoning;
- (f) Abstract thinking;
- (g) Judgment;
- (h) Problem-solving;
- (i) Sensory, perceptual, and motor abilities;
- (j) Psychosocial behavior;
- (k) Physical functions;
- (l) Information processing; and
- (m) Speech.

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

**(65) "Visual impairment" or "VI"** means a vision loss, even with correction that:

- (a) Requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration;
- (b) Has an adverse effect on the child's educational performance; and
- (c) Meets the following:

1. The child has visual acuity with prescribed lenses that is 20/70 or worse in the better eye; or
2. The child has visual acuity that 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 twenty (20) degrees or worse; c. A medically-diagnosed condition of cortical blindness; or d. A functional vision loss.

**(66) "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 nonvoluntary and the biological or adoptive parental rights have been terminated.

**(67) "Weapon" means "dangerous weapon"** as defined in 18 U.S.C. 930(g)(2).

**(68) "Withholding"** means no further payment of specified funds are made to an approved recipient.

(26 Ky.R. 2127; Am. 27 Ky.R. 153; 496; eff. 8-14-2000; 33 Ky.R. 3463; 34 Ky.R. 41; 977; eff. 12-7-2007.)

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## **707 KAR 1:290. Free appropriate public education.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C., 1400-1419, 6398

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015 NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412, and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for providing a free, appropriate, public education for children identified as eligible for special education services.

**Section 1. Free Appropriate Public Education.** (1) AN LEA shall make a free appropriate public education (FAPE) available to all children with disabilities aged three (3) to twenty-one (21) residing within its district's boundaries who have not received a high school diploma, including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year. FAPE shall be provided to each child with a disability even though the child has not failed or been retained in a course and is advancing from grade to grade based on the child's unique needs and not on the child's disability. An LEA shall not be required to provide FAPE to a student eighteen (18) years old or older, who is placed in an adult correctional facility if, in the educational placement prior to placement in the correctional facility, the student was not identified as a child with a disability and did not have an IEP.

(2) AN LEA shall be responsible for ensuring the rights and protections under 707 KAR Chapter 1 are given to children with disabilities referred to or placed in private schools and facilities by that LEA.

(3) 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. (4) If payment for services under 707 KAR Chapter 1 is to be provided by an agency other than the LEA, the LEA shall ensure the services are provided without delay even if there is a delay in the payment for those services.

**Section 2. Residential Placement.** If it is determined necessary by an ARC to place a child with a disability for educational purposes in a private residential educational program, the program, including nonmedical care and room and board, shall be provided by the LEA which convened the ARC. An LEA may fulfill its responsibility under this section by providing the services directly or by contracting for those services.

**Section 3. Proper Functioning of Hearing Aids.** An LEA shall ensure that a hearing aid worn in school by a child with a hearing impairment is functioning properly. A LEA shall ensure that the external components of surgically implanted devices of children with disabilities are functioning properly; however, an LEA shall not be responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted.

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**Section 4. Program Options.** An LEA shall 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.

**Section 5. Nonacademic Services.** An LEA shall take steps, including the provision of supplementary aids and services as determined appropriate and necessary by the child's ARC, to provide all children with disabilities the nonacademic and extracurricular services and activities that give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include:

- (1) Counseling services;
- (2) Athletics;
- (3) Transportation;
- (4) Health services;
- (5) Recreational activities;
- (6) Special interest groups or clubs sponsored by the LEA;
- (7) Referrals to agencies that provide assistance to individuals with disabilities; and
- (8) Employment of students, including both employment by the LEA and assistance in making outside employment available.

**Section 6. Physical Education.** (1) Unless the provisions of subsection (2) of this section apply, an LEA shall make available to every child with a disability:

- (a) Physical education services, specially designed if prescribed in the child's IEP; or
  - (b) The opportunity to participate in the regular physical education program available to children without disabilities.
- (2) An LEA is not required to make available physical education services to a child with a disability if:
- (a) 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
  - (b) The LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

**Section 7. Assistive Technology.** (1) AN LEA shall ensure that assistive technology devices or assistive technology services, or both, as defined in 707 KAR 1:002(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. (2) 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.

**Section 8. Extended School Year Services.** AN LEA shall ensure that extended school year services (ESY) are available to each child with a 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 LEA shall 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.

**Section 9. Prohibition of Mandatory Medication.** LEA personnel shall not require a child to obtain a prescription for a substance covered by schedules I, II, III, IV, or V the Controlled Substance Act (21Back to

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U.S.C. 812(c)), as a condition of attendance in school, receiving an evaluation under 707 KAR 1:300, or receiving services under 707 KAR Chapter 1. However, school personnel may consult or share classroom-based observations with parents or guardians regarding student's academic, functional, or behavioral performance or regarding the need for evaluation to determine eligibility for special education services.

**Section 10. Records Regarding Migratory Children with Disabilities.** A LEA shall to transfer health and education records on migratory children with disabilities who move to other states in accordance with the No Child Left Behind Act, 20 U.S.C. 6398. (26 Ky.R. 2131; Am. 27 Ky.R. 499; eff. 8-14-2000; 33 Ky.R. 3463; 34 Ky.R. 548; eff. 11-5-2007.)

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## **707 KAR 1:300. Child find, evaluation, and reevaluation.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015 NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412, and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for conducting child find activities and procedures for evaluation and reevaluation of children with disabilities.

**Section 1. Child Find Requirements.** (1) An LEA shall have in effect policies and procedures that plan and implement a child find system to locate, identify, and evaluate each child:

- (a) Whose age is three (3) to twenty-one (21);
  - (b) Who resides in a home, facility, or residence within the LEA's geographical boundaries, including children with disabilities who attend private schools located within the LEA boundaries, children who are highly mobile such as migrant children, homeless children as described in 704 KAR 7:090, children who are wards of the state or are in state custody, and students who are advancing grade to grade resulting from passing a grade but who still may have a disability;
  - (c) Who is either in or out of school; and
  - (d) Who may need special education and related services.
- (2) For preschool age children with disabilities, an LEA must ensure a smooth and effective transition from the early intervention program to preschool.
- (3) Each LEA shall participate in transition planning conferences for children with disabilities served by early intervention programs.

**Section 2. Coordinated early intervening services.** A LEA may conduct early intervening services for students from kindergarten through 12th grade (with particular emphasis on students in kindergarten through grade three (3)) who need additional academic and behavioral support in order to be successful in the regular education environment prior to referral for special education. An LEA shall not spend more than fifteen (15) percent of the money received under IDEA Part B to provide these coordinated early intervening services.

**Section 3. Referral System.** (1) An LEA shall have a referral system that explains how referrals from district or nondistrict sources will be accepted and acted upon in a timely manner.

(2) The referral system shall be conducted in such a manner as to prevent inappropriate over identification or disproportionate representation by race and ethnicity of children in special education by ensuring that each child has been provided appropriate instruction and intervention services prior to referral.

(3) The LEA shall ensure that:

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(a) Prior to, or as a part of the referral process, the child is provided appropriate, relevant research-based instruction and intervention services in regular education settings, with the instruction provided by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement or measures of behavior is collected and evaluated at reasonable intervals, reflecting systematic assessment of student progress during instruction, the results of which were provided to the child's parents.

(4) If the child has not made adequate progress after an appropriate period of time during which the conditions in subsection (3) of this section have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered.

**Section 4. Evaluation and Reevaluation Procedures.** (1) An LEA shall 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 shall be used by the ARC in meeting the requirements on developing an IEP as provided in 707 KAR 1:320.

(2) Tests and other evaluation materials used to assess a child shall be:

(a) Selected and administered so as not to be discriminatory on a racial or cultural basis; and

(b) Provided and 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.

(3) Screenings conducted by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for specially designed instruction and related services and shall not need parental consent.

(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.

(5) A variety of assessment tools and strategies shall 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, 704 KAR 3:303.

(6) A standardized test given to a child 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.

(7) 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.

(8) Tests shall 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).

(9) A single procedure shall 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.

(10) The child shall 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.

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(11) The evaluation shall be sufficiently comprehensive to identify all the child's special education and related services needs, whether commonly linked to the disability category in which the child has been classified.

(12) Assessment 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.

(13) Assessments and evaluation of children with disabilities that 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 full evaluations.

(14) 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.

(15) 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 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.

(16) The LEA shall administer tests and other evaluation materials as needed to produce the data identified by the ARC. 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 LEA shall notify the child's parents:

- (a) Of that determination and reasons for it; and
- (b) 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.

(17) The LEA shall not be required to conduct a reevaluation, if:

- (a) After review of the existing data, the ARC determines:
  - 1. A reevaluation is not necessary to determine whether the child continues to be eligible for services; and
  - 2. 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.

(18) An LEA shall ensure a reevaluation, unless the parent and the LEA agree that a reevaluation is unnecessary. A reevaluation may consist of the review described in subsection (14) of this section, 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 special education and related services; and
- (c) Whether any additions or modifications 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.

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(19) A reevaluation shall not be conducted more than once a year unless the parent and the LEA agree otherwise.

(20) An LEA shall evaluate a child with a disability in accordance with this administrative regulation before determining that the child is no longer a child with a disability. The LEA shall 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 eligibility for a free, appropriate public education.

(21) For students who graduate or age out of the program, the LEA shall 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. (26 Ky.R. 2132; Am. 27 Ky.R. 157; 500; eff. 8-14-2000; 33 Ky.R. 3470; 34 Ky.R. 550; eff. 11-5-2007.)

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## **707 KAR 1:310. Determination of eligibility.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015 NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412, and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for the determination of eligibility for special education of children who have disabilities.

- Section 1. Determination of Eligibility.** (1) Upon analysis of intervention and assessment data, the ARC shall determine whether the child is a child with a disability as defined in Section 1(9) of 707 KAR 1:002 to the extent that specially designed instruction is required in order for the child to benefit from education. An LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.
- (2) A child shall not be determined to be eligible if the determinant factor for that eligibility determination is:
- (a) A lack of appropriate instruction in reading, including the essential components of reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. 6301;
  - (b) A lack of appropriate instruction in math; or
  - (c) Limited English proficiency and the child does not otherwise meet eligibility criteria.
- (3) In making eligibility determinations, an LEA shall draw upon information from a variety of sources, which may include:
- (a) Response to scientific, research-based interventions;
  - (b) Vision, hearing, and communication screenings;
  - (c) Parental input;
  - (d) Aptitude and achievement tests;
  - (e) Teacher recommendations;
  - (f) Physical condition;
  - (g) Social or cultural background;
  - (h) Adaptive behavior; or
  - (i) Behavioral observations.
- (4) An LEA shall ensure that information obtained from these sources as appropriate for each student, is documented and carefully considered.
- (5) In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate.
- (6) If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child.

**Section 2. Additional Procedures for Evaluating Children with Specific Learning Disabilities.** (1) 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

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considered 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.

(2) Any ARC convened to discuss a child with a suspected or documented specific learning disability shall be collectively qualified to:

- (a) Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, or social-emotional development;
- (b) Interpret assessment and intervention data and apply critical analysis to that data;
- (c) Develop appropriate educational and transitional recommendations based on the assessment data; and
- (d) Deliver and monitor specially designed instruction and services to meet the needs of a child with a specific learning disability.

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

- (a) 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:

- a. Oral expression;
- b. Listening comprehension;
- c. Written expression;
- d. Basic reading skills;
- e. Reading fluency skills;
- f. Reading comprehension;
- g. Mathematics calculation; or
- h. Mathematics reasoning;

(b) 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 subparagraph

(3)(a)2 of this section when assessed based on the child's response to scientific, research-based intervention; or

(c) 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.

(4) The ARC shall not identify a child as having a specific learning disability if deficits in achievement are primarily the result of:

- (a) A visual, hearing, or motor impairment;
- (b) Mental disability as defined in 707 KAR 1:002(37);
- (c) Emotional-behavioral disability;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or.
- (f) Limited English proficiency.

(5) At least one (1) team member other than the child's regular education teacher shall 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 shall take place in an environment appropriate for the child.

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

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- (a) 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
  - (b) 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.
- (7) If the child has not made adequate progress after an appropriate period of time, during which the conditions in paragraphs (a) and (b) of this subsection have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered.
- (8) An ARC shall develop documentation of a specific learning disability. This documentation shall contain a statement of:
- (a) Whether the child has a specific learning disability;
  - (b) The basis for making that determination;
  - (c) The relevant behavior noted during the observation;
  - (d) The relationship of that behavior to the child's academic functioning;
  - (e) The educationally relevant medical findings, if any;
  - (f) Whether the child does not achieve commensurate with the child's age and ability;
  - (g) 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 subparagraph (3)(a)2 of this section, that require special education and related services; and
  - (h) 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
  - (i) The instructional strategies used and the student-centered data collected based on the child's response to scientific, research-based intervention.
- (9) This documentation shall include notification to the child's parents concerning the policies regarding:
- (a) The amount and nature of student performance data that is collected and the general education services that are provided;
  - (b) Strategies for increasing the child's rate of learning; and
  - (c) The parents' right to request an evaluation.
- (10) Each ARC member shall certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusion, the team member shall submit a separate statement presenting the member's conclusions. (26 Ky.R. 2134; Am. 27 Ky.R. 158; 501; eff. 8-14-2000; 33 Ky.R. 3470; 34 Ky.R. 551; eff. 11-5-2007.)

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## **707 KAR 1:320. Individual education program.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015 NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for the development, implementation, and revision of individual education programs for each child with a disability.

**Section 1. Individual Education Programs.** (1) An LEA shall ensure an IEP is developed and implemented for each child with a disability served by that LEA, and for each child with a disability placed in or referred to a private school or facility by the LEA.

(2) Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, shall ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC.

(3) At the beginning of the school year, an LEA shall have an IEP in effect for each child with a disability within its jurisdiction.

(4) An LEA shall ensure the IEP:

(a) Is in effect before specially designed instruction and related services are provided to a child with a disability; and

(b) Is implemented as soon as possible following an ARC meeting.

(5) An LEA (or state agency responsible for developing the child's IEP) shall 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.

(6) An LEA shall ensure that:

(a) 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;

(b) Prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and

(c) The specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.

(7) An IEP shall be in place for all eligible children aged three (3) through five (5).

**Section 2. ARC Meetings.** (1) An LEA shall ensure that each child has an ARC which includes the membership in Section 3 of this administrative regulation and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

(2) 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 (such as, birth date, age, grade, address, or school), and other information required on the IEP that was agreed upon by the ARC but

incorrectly recorded. If the LEA makes any minor, non-programmatic changes, all members of the ARC shall be given a copy of the changes and an explanation as to why the changes were made within ten (10) school days of the changes being made. If any member of the ARC objects to the changes, an ARC meeting shall be convened within a reasonable period of time to discuss the changes.

(3) An LEA shall ensure that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child:

(a) The child is evaluated; and

(b) If the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.

(4) Within this sixty (60) school-day period, an LEA shall ensure that the ARC meeting to develop an IEP for the child is conducted within thirty (30) days of the determination that the child is eligible.

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

(a) If the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and the parent and the LEA 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.

(6) An LEA shall ensure that the ARC:

(a) Reviews each child's IEP periodically, but no less than annually, to determine whether the annual goals for the child are being achieved; and

(b) Revises the IEP in accordance with 34 C.F.R. 300.324(b)(1)(ii).

**Section 3. ARC Membership.** (1) An LEA shall ensure that the ARC for each child with a disability includes:

(a) The parents of the child;

(b) 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 curriculum for same aged peers;

(c) Not less than one (1) special education teacher of the child or a special education teacher who is knowledgeable about the child's suspected disability or, if appropriate, at least one (1) special education provider of the child;

(d) A representative of the LEA 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 LEA;

(e) An individual who can interpret the instructional implications of evaluation results who may be a member of the team described in paragraphs (b) through (d) of this subsection;

(f) An individual who has knowledge or special expertise regarding the child at the discretion of the parent or the LEA;

(g) Related services personnel, as appropriate; and

(h) The child, if appropriate.

(2) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEA agree in writing prior to the ARC meeting that the attendance of that member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the ARC meeting.

(3) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the LEA 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: (a) The parent and the LEA consent in writing to the excusal; and

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- (b) The member submits, in writing, to the parent and the ARC team, input into the development of the IEP prior to the meeting.
- (4) If the purpose of the ARC is to discuss transition services for a child with a disability as described in Section 4 (3) and (4) of this administrative regulation, the child shall be invited to the ARC. If the child does not attend the ARC meeting, the LEA shall take other steps to ensure that the child's preferences and interests are considered. 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 LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.
- (5) 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 the personnel listed in 707 KAR 1:310, Section 2(1), in addition to the personnel listed in subsection (1) of this section.
- (6) If the purpose of the ARC meeting is to discuss transition from the early intervention program into the preschool program, the LEA shall invite a representative of the early intervention program to the initial transition ARC meeting if the parent requests. At the ARC meeting, the child's previous Individualized Family Service Plan that was used by the early intervention program shall be considered when developing the new IEP for the child.

**Section 4. Parent Participation.** (1) An LEA shall ensure that one (1) or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before an ARC meeting. The meeting shall be scheduled at a mutually-agreed-on time and place.

(2) An LEA shall send an ARC meeting invitation to the parents which includes:

- (a) The purpose;
  - (b) Time;
  - (c) Location of the meeting;
  - (d) Who will be in attendance;
  - (e) Notice that the parents may invite people with knowledge or special expertise of the child to the meeting; and
  - (f) Notice that the LEA will invite representatives from the early intervention program to the initial meeting, if the parents request it.
- (3) If the child is in the eight grade year, or has reached the age of fourteen (14) years, the invitation shall state that a purpose of the meeting will be the development of a statement for the need for transition services for the child and state that the child is invited. This subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.
- (4) For a child with a disability, beginning no later than the IEP that will be in effect when the child turns sixteen (16), 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 subsection shall apply to a child younger than sixteen (16) years of age if determined to be appropriate by the ARC.
- (5) An LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.
- (6) An ARC meeting may be conducted without a parent in attendance if the LEA is unable to convince the parent that he should attend. The LEA shall have a record of its attempts to arrange a mutually-agreed-on time and place, which may include:
- (a) Detailed records of telephone calls made or attempted and the results of those calls;

- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits to the parent's home or place of employment and the results of those visits.
- (7) When using an interpreter or other action, as appropriate, an LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (8) An LEA shall give the parent a copy of the child's IEP at no cost to the parent.

**Section 5. Contents of IEP.** (1) An ARC shall consider in the development of an IEP:

- (a) The strengths of the child and the concerns of the parents for enhancing the education of their child;
  - (b) The results of the initial or most recent evaluation of the child;
  - (c) As appropriate, the results of the child's performance on any general state or district-wide assessment programs; and
  - (d) the academic, developmental, and functional needs of the child.
- (2) An ARC shall:
- (a) 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;
  - (b) 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;
  - (c) In the case of the 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;
  - (d) Consider the communication needs of the child;
  - (e) 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
  - (f) Consider whether the child requires assistive technology.
- (3) All the factors listed in this section shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.
- (4) Once the ARC has considered all the factors listed in this section 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).
- (5) A regular education teacher of the child, as a member of the ARC, shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate:
- (a) Positive behavioral interventions and strategies for the child;
  - (b) Supplementary aids and services; and
  - (c) Program modifications or supports for school personnel that will be provided for the child.
- (6) An ARC shall not be required to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP.
- (7) The IEP for each child shall include:
- (a) 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

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- provided in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
- (b) A statement of measurable annual goals, including academic and functional goals, designed:
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, 704 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities; and
  2. Meet the child's other educational needs that result from the disability.
- (c) A LEA's procedures may determine the use of benchmarks or short-term objectives for a child's IEP.
- (8) An IEP shall 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 shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:
- (a) Advance appropriately toward attaining the annual goals;
  - (b) Be involved and make progress in the general curriculum;
  - (c) Participate in extracurricular and other nonacademic activities; and
  - (d) Be educated and participate with other children with and without disabilities.
- (9) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes.
- (10) An IEP shall contain a statement of any individual accommodations to be provided the child in order to participate in the state or districtwide assessment. These accommodations shall be based on the requirements contained in 703 KAR 5:070, Inclusion of special populations in the state-required assessment and accountability programs.
- (11) 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.
- (12) An IEP shall 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.
- (13) An IEP shall include a statement of:
- (a) How the child's progress toward meeting the annual goals will be measured; and
  - (b) 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.
- (14) At least one (1) year prior to the child reaching the 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.
- (15) The IEP shall also include the requirements for transition services for eligible students as detailed in Section 7 of this administrative regulation.

**Section 6. Program for Students who Transfer.** (1) If a child with a disability transfers between LEAs within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child shall be provided a free, appropriate public education by the receiving LEA including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA adopts the previous IEP or develops, adopts, and implements a new IEP.

(2) If a child with a disability transfers from an LEA outside Kentucky to an LEA within Kentucky within the same academic year, and had an IEP in effect in the other state, the child shall be provided a free, appropriate public education by the receiving LEA including services comparable to those described in the

previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child is a child with a disability as defined in 707 KAR 1:002, Section 1(9).

(3) To facilitate the transition of a child who transfers, the receiving LEA 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 LEA shall take reasonable steps to promptly respond to such requests from the receiving LEA.

**Section 7. Transition Services.** (1) 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 shall 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 shall be updated annually.

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

(a) Appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment, and, where appropriate, independent living skills; and

(b) The transition services (including the course of study) needed to assist the child in reaching these goals.

(3) Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, and if required to assist a child with a disability to benefit from special education.

(4) If an agency, other than the LEA, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the LEA (or the state agency responsible for developing the child's IEP) shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP.

(5) 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.

**Section 8. Private School Placements by the LEA.** (1) Prior to placing a child with a disability in, or referring a child to, a private school or facility, the LEA shall initiate and conduct an ARC meeting to develop an IEP for the child.

(2) The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) After a child with a disability is placed in a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.

(4) If a private school or facility initiates the meetings, the LEA shall ensure that the parents and LEA staff are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. If a child with a disability is placed by the LEA in a private school or facility, the LEA shall remain responsible for compliance with 707 KAR Chapter 1.

(5) An LEA that places a child with a disability in or refers a child to a private school shall ensure that the child:

(a) 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; (b) Is provided an education that meets the standards of the LEA, including general curriculum standards; and

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(c) Has all the rights of any child with a disability served by the LEA.

**Section 9. IEP Accountability.** (1) An LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child in achieving the goals, objectives, or benchmarks listed in the IEP. (2) An LEA shall be responsible for including children with disabilities in the statewide assessment as provided in 703 KAR 5:070. (3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

KEVIN M. NOLAND, Interim Commissioner of Education  
KEITH TRAVIS, Chairperson  
APPROVED BY AGENCY: June 14, 2007  
FILED WITH LRC: June 14, 2007 at 11 a.m.

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## **707 KAR 1:340. Procedural safeguards and state complaint procedures.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015 NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

**Section 1. Parent Participation in Meetings.** (1) A parent of a child with a disability shall be afforded an opportunity to:

(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and

(b) Participate in all ARC meetings concerning his child.

(2) An LEA shall provide parents a written notice of ARC meetings in accordance with this administrative regulation.

(3) A LEA may conduct an ARC meeting without a parent in attendance if the LEA is unable to convince the parent to attend. The LEA shall keep a record of its attempts to arrange a mutually agreed on time and place. These records may include:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; or

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(4) LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:

(a) Teaching methodology;

(b) Lesson plans;

(c) Coordination of service provision; or

(d) Preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

**Section 2. Independent Educational Evaluation.** (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) If a parent requests an independent educational evaluation, the LEA shall provide information to the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.

(3) If a parent requests an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the LEA, the LEA shall, without unnecessary delay: (a) Initiate a due process hearing to show that its evaluation is appropriate; or

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- (b) Ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria;
- (4) The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under subsection (3) of this section while waiting for a response from a parent; and
- (5) If an independent educational evaluation 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 that the LEA uses when it initiates an evaluation. Aside from these criteria, the LEA shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.
- (6) 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.
- (7) If the LEA initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the LEA's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.
- (8) If the parent obtains an independent educational evaluation at public or private expense and it meets the agency criteria, results of the evaluation shall be considered by the LEA in any decision made with respect to the provision of a free, appropriate public education (FAPE) to the child.
- (9) If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

**Section 3. Notice to Parents.** (1) Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before the LEA:

- (a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (2) An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.
- (3) The notice required by subsections (1) and (2) of this section shall include:
- (a) A description of the action proposed or refused by the LEA;
- (b) An explanation of why the LEA proposes or refuses to take the action;
- (c) A description of any other options that the LEA considered and the reasons why those options were rejected;
- (d) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;
- (e) A description of any other factors that are relevant to the LEA's proposal or refusal;
- (f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 C.F.R. 300.504, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- (g) Sources for the parents to contact to obtain assistance in understanding the provisions of this section.
- (4) The notice required by subsections (1) and (2) of this section shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of the translation.

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Section 4. Procedural Safeguards Notice. (1) A copy of the procedural safeguards notice (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:

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

(2) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 C.F.R. 300.504.

**Section 5. Parental Consent.** (1) An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

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

(3) If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if: (a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s); (b) The rights of the parent(s) have been terminated by a court of competent jurisdiction; or (c) The rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

(4) In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parent(s), the LEA shall keep a record of its attempts which may include: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

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

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

(7) Parental consent for reevaluation shall not be required if the LEA can demonstrate that: (a) It made reasonable efforts to obtain such consent and followed the procedures in subsection (4) of this section of this administrative regulation to show those efforts; and (b) The parent failed to respond.

(8) Parental consent shall not be required before: (a) Reviewing existing data as part of an evaluation or reevaluation; or

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(b) Administering a test or other evaluation that is administered to all children unless consent is required of all parents before the administration of the test or evaluation.

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

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

**Section 6. Representation of Children.** (1) If the child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if: (a) Despite reasonable efforts, the LEA cannot discover the whereabouts of the parent; (b) The rights of the parents have been terminated in accordance with state law; or (c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

(2) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 707 KAR 1:002(43), shall be presumed to be the parent for purposes of 707 KAR Chapter 1 unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in Section 1(43)(a) through (d) of 707 KAR 1:002 to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(3) An LEA shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if: (a) No individual can be identified as a parent as defined in 707 KAR 1:002; (b) An LEA, after reasonable efforts, cannot discover the whereabouts of the parents; (c) The child is a ward of the state; or (d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431.

(4) The LEA shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, such as: (a) Detailed records of the telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(5) An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 C.F.R. Part 300, and 707 KAR Chapter 1, to make decisions about educational issues for a child.

(6) An LEA shall have a procedure for selecting surrogates. A surrogate: (a) Shall not be an employee of the Kentucky Department of Education, the LEA, or any other agency that is involved in the education or care of the child; (b) Shall not have any personal or professional interest that conflicts with the interests of the child; and (c) Shall have knowledge and skills that ensure adequate representation of the child.

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

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(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in until a surrogate parent can be appointed that meets all the requirements of this section.

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

(10) 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.

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

**Section 7. State Complaint Procedures.** (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.151 through 300.153:

(a) The Kentucky Department of Education shall have of sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;

(b) The complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;

(c) The LEA shall have an opportunity to respond to the complaint including, at least:

1. A proposal to resolve the complaint; and 2. An opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;

(d) The department shall review of all relevant information; and

(e) The department shall issue a written decision addressing each allegation in the complaint and containing the findings of fact and conclusions and the reasons for the final decision.

(2) Any organization or individual including someone from outside the state may file a signed written complaint under this administrative regulation.

(3) The complaint shall include: (a) A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA administrative regulations;

(b) The facts on which the statement is based;

(c) A signature and contact information for the complainant;

(d) Name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431;

(e) Name of the school the child is attending;

(f) A description of the nature of the problem, including facts related to the problem;

(g) A proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and

(h) Information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

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

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

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(6) The Kentucky Department of Education shall allow an extension of the time limit under subsection (1)(a) of this section 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.

(7) The Kentucky Department of Education shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply: (a) Technical assistance activities; (b) Negotiations; or (c) Corrective actions. Right to Mediation and Due Process Hearings. (1) An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.

(2) A parent or an LEA 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 the refusal to initiate or change the identification, evaluation, or educational placement of the child.

(3) When a hearing is initiated, the LEA shall inform the parent of the availability of mediation to resolve the dispute.

(4) The LEA 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 LEA initiates a hearing.

**Section 9. Mediation Rights.** (1) The mediation process, if chosen, shall:

(a) Be voluntary;

(b) Not be used to deny or delay a parent's right to a due process hearing under Sections 8 and 11 of this administrative regulation or 34 C.F.R. 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and

(c) Be conducted by a qualified and impartial mediator trained in effective mediation techniques.

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

(a) Not be an employee of the Kentucky Department of Education or the LEA that is involved in the education or care of the child;

(b) Be chosen at random for the mediation process; and

(c) Not have a personal or professional conflict of interest.

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

(4) The sessions in the mediation process shall be:

(a) Scheduled in a timely manner not to exceed sixty (60) days; and

(b) Held at a location that is convenient to both parties to the dispute.

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

(a) Sets forth the resolution and a timeline in which it shall be implemented;

(b) States that all discussions that occurred in the mediation process shall be confidential; and

(c) May not be used as evidence in any subsequent due process hearing or civil proceeding.

(6) Both the parent and a representative of the LEA who has the authority to bind the LEA 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.

(7) 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.

**Section 10. Dispute Resolution.** (1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members

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of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who has decision-making authority on behalf of the LEA shall also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.

(2) The purpose of this meeting is:

- (a) To allow the parents to discuss their due process hearing request;
- (b) To discuss the facts that formed the basis of the request; and
- (c) To give the LEA an opportunity to resolve the complaint.

(3) This meeting shall not take place if the parents and the LEA agree in writing to waive the meeting or agree to use the mediation process.

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

- (a) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and
- (b) Is enforceable in any state court of competent jurisdiction or a district court of the United States.

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

(6) If the LEA 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.

(7) The timeline for issuing a final decision pursuant to 34 C.F.R. 300.515 shall begin at the expiration of the thirty (30) day timeline referred to in subsection (6) of this section, except for adjustments allowed in subsections (11) and (12) of this section.

(8) 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.

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

(10) The LEA shall keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:

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

(11) If the LEA 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 C.F.R. 300.515.

(12) The forty-five (45) day timeline for the due process hearing in 34 C.F.R. 300.515 starts the day after one (1) of the following events:

- (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 LEA withdraws from the mediation process.

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Section 11. Hearing Rights. (1) The parent of a child with a disability or the attorney representing the child, or the LEA that files a request for a hearing shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

- (a) The name of the child; (b) The address of the residence of the child;
- (c) The name of the school the child is attending;
- (d) A description of the nature of the problem; and
- (e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

(2) The Kentucky Department of Education shall provide a model form entitled "Request for a Due Process Hearing", that meets these requirements to assist parents in filing a request a due process hearing.

(3) A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the information listed in subsection (1) of this section. This notice shall be provided to the other party and to the Kentucky Department of Education.

(4) The procedures included in KRS Chapter 13B and IDEA Subpart B shall apply to a due process hearing.

**Section 12. Appeal of Decision.** (1) 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. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal, within thirty (30) calendar days of the date of the hearing officer's decision.

(2) 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.

(3) Except as provided in Sections 14 and 15 of this administrative regulation, 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 LEA and the parent 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 LEA 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 LEA.

(4) 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 until the proceedings are final.

**Section 13. Discipline Procedures.** (1) The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. (2) School personnel may remove a student with a disability who violates a code of student conduct 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).

(3) School personnel may remove a student with a disability from the student's current placement for additional periods of time of not more than 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.

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- (4) 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 (as described in Section 14 of this administrative regulation), 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.
- (5) 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, educational services as described in subsection (6)(a) and (b) of this section shall be provided during any subsequent days of removal.
- (6) A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:
- (a) Continue to receive a free, appropriate public 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 (b) 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.
- (7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.
- (8) An LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.
- (9) 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, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed.
- (10) If a removal is a change in placement because of disciplinary removals, the child's ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child. If the student has been placed in an interim alternative educational setting, the LEA shall invite staff from that alternative setting to the ARC meeting.

**Section 14. Manifestation Determination.** (1) 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 LEA and the parent, shall 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: (a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or (b) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either of the conditions in subsection (1)(a) or (b) of this section was met.

(3) If the ARC determines that the condition described in subsection (1)(b) of this section was met, the LEA shall take immediate steps to remedy those deficiencies.

(4) If the ARC determines that the conduct was a manifestation of the child's disability, the ARC shall:

- (a) 1. Conduct a functional behavioral assessment, unless the LEA had 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 2. Review the behavioral intervention plan, (if one had already been developed) and modify it, as necessary, to address the behavior; and

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(b) Return the child to the placement from which the child was removed unless the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in subsection (5) of this section.

(5) 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, if 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 LEA; (b) Knowingly possesses or uses illegal drugs, or sells 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 LEA; 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 LEA.

(6) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards in accordance with Section 4 of this administrative regulation.

(7) The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 13(4), (10) and 14(5) of this administrative regulation.

**Section 15. Appeals from Placement Decisions.** (1) The parent of a child with a disability who disagrees with any decision regarding placement under Section 13 or 14 of this administrative regulation or the manifestation determination, or an LEA that 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 hearing by filing using the procedures contained in Sections 8 and 11.

(2) A hearing officer shall hear and make a determination regarding an appeal requested pursuant to subsection (1) of this section.

(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.

(4) 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 provided for in subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

(5) 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.

**Section 16. Basis of Knowledge.** (1) An LEA shall be deemed to have knowledge that a child is a child with a disability if: (a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;

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- (b) The parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or  
(c) The teacher of the child, or other personnel of the LEA, has expressed concern about a pattern of behavior or performance of the child directly to the director of special education or other supervisory personnel of the LEA.
- (2) An LEA shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that the child may have a disability: (a) The LEA conducted an evaluation and determined the child was not a child with a disability; (b) The LEA determined an evaluation was not necessary and provided notice to the parents of these determinations; or (c) The parents refused to consent to an evaluation or refused initial services.
- (3) If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.
- (4) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

**Section 17. Reporting to Law Enforcement Agencies.** (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.  
(2) If an LEA reports a crime committed by a child with a disability, it shall 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 Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.

**Section 18. Incorporation by Reference.** (1) "Request for a Due Process Hearing", February 2007, is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Exceptional Children Services, Department of Education, Capital Plaza Tower, 500 Mero Street, Eighth Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (26 Ky.R. 2139; Am. 27 Ky.R. 164; 765; eff. 9-11-2000; 33 Ky.R. 3480; 34 Ky.R. 51; 556; \_\_\_\_; eff 11-6-2007.)

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## **707 KAR 1:350. Placement decisions.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.181, 20 U.S.C., 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015 NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements for making placement decisions about children with disabilities.

- Section 1. Placement Decisions.** (1) An LEA shall ensure that to the maximum extent appropriate, children with disabilities, including children placed by the LEA in public or private institutions or other care facilities, are educated with children who are nondisabled. The LEA shall ensure that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if education in the regular education environment with the use of supplementary aids and services cannot be satisfactorily achieved due to the nature or severity of the disability.
- (2) An LEA shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- (3) The continuum shall include the alternative placements of: (a) Instruction in regular classes;
- (b) Special classes;
- (c) Special schools;
- (d) Home instruction; and
- (e) Instruction in hospitals and institutions.
- (4) The LEA shall make provision for supplementary services to be provided in conjunction with regular class placement.
- (5) In determining the educational placement of a child with a disability, the LEA shall ensure that the placement decision is made by the ARC in conformity with the least restrictive environment provisions.
- (6) 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.
- (7) Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he would attend if nondisabled.
- (8) In selecting the least restrictive environment, consideration shall be given to any potential harmful effects on the child or on the quality of services that he needs.
- (9) A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
- (10) In providing or arranging for the provision of nonacademic and extracurricular services and activities, an LEA shall ensure that a child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of the child.

**Section 2. Class Size.** (1) An LEA shall provide special education for each child with a disability in accordance with the following maximum caseloads for special classes:

- (a) Emotional-behavior disability is eight (8);
- (b) Functional mental disability is ten (10);
- (c) Hearing impairment is six (6);
- (d) Mild mental disability is fifteen (15);
- (e) Multiple disabilities is ten (10);
- (f) Orthopedic impairment is sixteen (16);
- (g) Other health impairment is sixteen (16);
- (h) Specific learning disability for primary is ten (10) and for secondary is fifteen (15); and
- (i) Visual impairment is ten (10).

(2) An LEA shall provide special education for each child with a disability in accordance with the following maximum caseloads for resource classes:

- (a) Emotional-behavior disability is eight (8);
- (b) Functional mental disability is eight (8);
- (c) Hearing impairment is eight (8);
- (d) Mild mental disability is ten (10);
- (e) Multiple disabilities is eight (8);
- (f) Orthopedic impairment is ten (10);
- (g) Other health impairment is ten (10);
- (h) Specific learning disability is ten (10); and
- (i) Visual impairment is eight (8).

(3) Children with disabilities that meet the definition of autism; deaf-blindness; developmental delay for ages six (6), seven (7), and eight (8); and traumatic brain injury shall be served in regular classes, special classes, or resource classes as determined by the ARC.

(4) If a teacher of exceptional children provides services through the collaborative model, the maximum caseload shall not exceed twenty (20) children with disabilities for secondary, and fifteen (15) children with disabilities for primary.

(5) Pursuant to KRS 157.360, if caseload for special classes or class size for resource classes exceeds the maximum specified in this section for thirty (30) days, an LEA shall submit a waiver request to the Kentucky Department of Education.

**Section 3. Case Load for Resource Teachers.** Caseloads for resource teachers shall refer to the maximum number of student records a teacher may be assigned. An LEA shall make those assignments based on the following:

- (1) Emotional-behavioral disability is fifteen (15);
- (2) Functional mental disability is ten (10);
- (3) Hearing impairment is eight (8);
- (4) Mild mental disability for primary is fifteen (15) and for secondary is twenty (20);
- (5) Multiple disabilities is ten (10);
- (6) Orthopedic impairment is twenty (20);
- (7) Other health impairment is twenty (20);
- (8) Specific learning disability for primary is fifteen (15) and for secondary is twenty (20);
- (9) Visual impairment is ten (10); and
- (10) Speech language pathologist caseload limits as contained in KRS 334A.190. (26 Ky.R. 2143; Am. 27 Ky.R. 167; 505; eff. 8-14-2000; 33 Ky.R. 3488; 34 Ky.R. 563; eff. 11-5-2007.)

## **707 KAR 1:360. Confidentiality of information.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1 -300.818, 20 U.S.C. 1400-1419 STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015 NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements ensuring confidentiality of information maintained by school districts regarding children with disabilities.

**Section 1. Access Rights.** (1) An LEA shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the LEA. The LEA shall 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.

(2) The right to inspect and review education records under this administrative regulation shall include: (a) The right to a response from the LEA to reasonable requests for explanations and interpretations of the records; (b) The right to request that the 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 (c) The right to have a representative of the parent inspect and review the records.

(3) An LEA may presume that a parent has authority to inspect and review records relating to his child unless the LEA has been advised under a court order that the parent does not have the authority.

**Section 2. Record of Access.** An LEA shall 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 LEA), including:

- (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.

**Section 3. Records on More than One (1) Child.** If any education record includes information on more than one (1) 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.

**Section 4. Types and Location of Information.** An LEA shall 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 LEA.

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**Section 5. Fees.** (1) An LEA 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. (2) The LEA shall not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

**Section 6. Amendment of Records and Opportunity for Hearing.** (1) 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 LEA to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the LEA shall respond within ten (10) school days.

(2) 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.

**Section 7. Consent.** (1) 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:

(a) Disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Chapter 1; or

(b) Used for any purpose other than meeting a requirement under 707 KAR Chapter 1.

(2) An LEA shall not release information from education records to participating agencies without parental consent unless authorized to do so under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g.

(3) If a parent refuses to provide consent for release of personally identifiable information, a party may request a due process hearing pursuant to 707 KAR 1:340 or comply with the FERPA.

**Section 8. Safeguards.** (1) An LEA shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

(2) An LEA shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.

(3) An LEA employee collecting or using personally identifiable information shall receive training or instruction regarding the requirements of this administrative regulation.

(4) An LEA shall maintain, for public inspection, a current listing of the names and positions of employees within the LEA who may have access to personally identifiable student information.

**Section 9. Destruction of Information.** An LEA shall 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 shall be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.

**Section 10. Children's 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. (26 Ky.R. 2144; Am. 27 Ky.R. 169; 506; eff. 8-14-2000; 33 Ky.R. 3490; 34 ky.R. 981; eff. 12-7-2007.)

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## **707 KAR 1:370. Children with disabilities enrolled in private schools.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419 STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes standards for school districts to make appropriate educational services available to children with disabilities who have been enrolled in private schools by their parents.

### **Section 1. Children with Disabilities Enrolled in Private Schools by Their Parents when FAPE is at Issue.**

(1) An LEA shall make FAPE available to each child with a disability. If a parent decides to place his child with a disability in a private school after the offer of FAPE, the LEA shall not be required to pay for the cost of the private education. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR 1:340.

(2) If a parent of a child with a disability, who previously received special education and related services under the authority of the LEA, enrolls the child in a private school without the consent of or referral by the LEA, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the LEA did not offer FAPE to the child in a timely manner and the private placement is appropriate. This may be awarded even if the parents did not receive consent from the LEA for the private placement and the LEA did not make a referral to the private school. A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to an LEA.

(3) The amount of the financial reimbursement described in subsection (2) of this section may be reduced or denied if: (a) At the most recent ARC meeting prior to the removal by the parents of their child with a disability to the private school, the parents did not inform the LEA that they were rejecting the proposed LEA placement, including stating their concerns and their intent to enroll the child in a private school at public expense; (b) The parents did not give written notice to the LEA of the information described in paragraph (a) of this subsection at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child; (c) Prior to the parent's removal of the child, the LEA informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or (d) There is a judicial finding that the actions taken by the parents were unreasonable.

(4) The amount of financial reimbursement shall not be reduced or denied for the failure to provide the notice described in subsection (3) of this section if: (a) The parent is illiterate;

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(b) Compliance with the notice requirement would likely result in physical or serious emotional harm to the child; (c) The school prevented the parent from providing the notice; or (d) The parent had not received notice from the LEA of his obligation to provide this notice.

**Section 2. Child Find for Children with Disabilities Enrolled by Their Parents in Private School.** (1) An LEA shall locate, identify, and evaluate all private school children with disabilities, including school children attending private, religious schools within the boundaries of the LEA. These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA in which private schools are located shall include parentally-placed private school children who attend those schools but reside in a state other than Kentucky in the LEA's child find activities.

(2) The LEA shall maintain in its records and provide to KDE: (a) The number of children evaluated under this section; (b) The number of children determined to be children with disabilities under this section; and (c) The number of children served under this section.

(3) An LEA shall consult with appropriate representatives of the private schools on how to carry out these activities.

(4) Child find activities shall be completed in a time period comparable to that for other students attending public school in the LEA. An LEA shall not consider the costs, including the cost of individual evaluations incurred by the LEA's child find activities, in meeting its obligation under Section 4(3) of this administrative regulation.

**Section 3. Parental Consent.** (1) If a parent of a child who is parentally placed in a private school does not provide consent for the initial evaluation or the reevaluation or a parent fails to respond to such a request, the LEA: (a) Shall not use the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing; (b) Shall not be required to consider the child as eligible for services under this administrative regulation; and (c) Shall document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place of employment visits, and the results of these efforts.

**Section 4. Basic Requirements.** (1) A LEA shall provide special education and related services to parentally placed private school children with disabilities in accordance with the procedure found in Section 5 of this administrative regulation, to the extent consistent with the number and location of these children enrolled in private schools located within the school district boundaries.

(2) A service plan shall be developed and implemented for each private school child with a disability who has been designated by the LEA to receive special education and related services under Section 5 of this administrative regulation.

(3) To meet this requirement, a LEA shall spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 C.F.R. 300.133. This amount shall be determined after the LEA has completed its child find activities and submitted a child count figure to KDE. This child count shall be conducted on December 1 of each year.

**Section 5. Consultation.** (1) A LEA shall consult in a meaningful and timely fashion with private school representatives, and parents or representatives of parents of parentally-placed school children with Back to

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disabilities during the design and development of special education and related services regarding the following: (a) The child find process, including how children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process; (b) The determination of the proportionate share of federal funds, including how calculated; (c) How the consultation process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services; (d) How, where, and by whom special education and related services will be provided including:

1. A discussion of the types of services, including direct services and alternate service delivery methods;
2. How special education and related services will be apportioned if funds are not sufficient to serve all parentally placed private school students with disabilities; and
3. How and when those decisions will be made; and (e) How the LEA will provide a written explanation to the private schools of the reasons why the LEA chose not to provide services directly or through a contract, if the LEA disagrees with the views of the private school representatives.

(2) When timely and meaningful consultation has occurred, the LEA shall obtain a written affirmation signed by the representatives of the private schools. If a private school does not provide the affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the KDE.

**Section 6. Services Provided.** (1) An LEA shall ensure that services provided under a services plan shall be provided by personnel meeting the same standards as personnel providing services in the public school, except private school teachers that provide services under a service plan shall not have to meet the highly-qualified special education teacher requirements of 20 U.S.C. 1401(10).

(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. There shall be no individual right to special education and related services, but the student shall receive the services provided in the service plan in light of the services the LEA has determined to provide.

(3) A private school child with a disability who has been designated to receive services shall have a services plan that describes the specific special education or related services that the LEA will provide in light of the services the LEA has determined to provide private school children with disabilities through the process in Section 5 of this administrative regulation.

(4) The services plan shall, to the extent appropriate: (a) Meet the requirements of an IEP under 707 KAR 1:320 with respect to the services provided; and (b) Be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs.

(5) Services delivered through a service plan shall be provided by: (a) Employees of the LEA; or (b) Through a contract with the LEA.

(6) Special education and related services provided through a service plan shall be secular, neutral, and non-ideological.

**Section 7. Location of Services.** (1) A service to a private school child with a disability may be provided at a site determined by the LEA. If necessary for the child to benefit from or participate in the services provided under a services plan, the private school child with a disability shall be provided transportation: (a) From the child's school or the child's home to a site other than the private school; and

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- (b) From the service site to the private school, or to the child's home, depending on the timing of the services.
- (2) An LEA shall not be required to provide transportation from the child's home to the private school. (3) The cost of transportation may be included in calculating the amount to be expended on private school children with disabilities.

**Section 8. Due Process Procedures.** (1) The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340, Sections 4, 6, 8, 9, 10, 11, 12 shall not apply to complaints that an LEA failed to meet the requirements of this administrative regulation, including the provision of services indicated on a services plan. However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340, Section 7. The due process procedures described in 707 KAR 1:340 shall apply to complaints that an LEA failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

(2) A private school official has the right to submit a state written complaint to the LEA and the Kentucky Department of Education as outlined in 707 KAR 1:340, Section 7, for allegations that the LEA:

(a) Did not engage in timely and meaningful consultation; or

(b) Did not give due consideration to the views of the private school official.

(3) If the private school official submits a state written complaint, the official shall provide the basis of the alleged noncompliance by the LEA.

(4) If the private school official is dissatisfied with the final decision of the Kentucky Department of Education, the official may submit a complaint to the Secretary of the United States Department of Education. If such a complaint is filed with the secretary, the Kentucky Department of Education shall forward the appropriate documentation to the Secretary.

**Section 9. Restrictions on Serving Nonpublic Students.** (1) An LEA shall not use funds under Part B of IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA shall use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for:

(a) The needs of a private school; or

(b) The general needs of the students enrolled in the private school.

(2) An LEA may use funds under Part B of IDEA to make public school personnel available in private schools to the extent necessary to provide services under a services plan and if those services are not normally provided by the private school.

(3) An LEA may use funds under Part B of IDEA to pay for the services of private school personnel to provide services under a services plan if the employee performs the services outside his regular hours of duty and the employee performs the services under the supervision and control of the LEA.

(4) The LEA shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities. An LEA may place equipment and supplies in a private school for the period of time needed to provide the services.

(5) The LEA shall ensure that the equipment, and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

(6) The LEA shall remove equipment and supplies from the private school if the equipment and supplies are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies.

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(7) The LEA shall not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities. (26 Ky.R. 2146; Am. 27 Ky.R. 507; eff. 8-14-2000; 33 Ky.R. 3492; 34 Ky.R. 564; eff. 11-5-2007.)

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## **707 KAR 1:380. Monitoring and recovery of funds.**

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419 STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes the procedures that will be followed by the Department of Education in the event it is necessary to take corrective action on behalf of children with disabilities.

**Section 1. Monitoring.** (1) The Kentucky Department of Education shall conduct monitoring of LEAs and other agencies that provide educational services to children with disabilities on a regular basis to determine compliance with federal and state requirements. Off-site monitoring shall include review of the following:

- (a) LEA's self-assessment;
  - (b) Reports, including count and data tables, and performance reports;
  - (c) Complaints and due process hearings;
  - (d) Finance reports; and
  - (e) Documentation indicating inclusion of children with disabilities in the assessment and accountability system.
- (2) Off-site monitoring shall identify any areas of noncompliance that indicate the need for further investigation, including an on-site review.
- (3) On-site monitoring may include:
- (a) Review of individual children's records, including records of children served by private or state-operated schools;
  - (b) Interviews with staff;
  - (c) A survey of parents;
  - (d) Visits in schools and classrooms; and
  - (e) Other activities, including review of financial records.
- (4) Following an off-site or on-site review, the Kentucky Department of Education shall issue a written report. Deficiencies specified in the report shall be the basis for the LEA to develop a corrective action plan (CAP) for review and approval by the Kentucky Department of Education. Prior to the development of the CAP, the LEA shall have the opportunity to submit additional information to verify or clarify issues related to the report. Each CAP shall be monitored and enforced by the Kentucky Department of Education.
- (5) A CAP shall be submitted to the Kentucky Department of Education no later than thirty (30) business days after the LEA receives the report of noncompliance. The CAP shall include:
- (a) A statement of the matter to be corrected; and
  - (b) The steps the LEA shall take to correct the problem and document compliance.
- (6) Within thirty (30) business days of receiving the CAP, the Kentucky Department of Education shall notify the LEA of the status of the CAP. If the Kentucky Department of Education rejects the CAP, the LEA shall have fifteen (15) business days to submit a new CAP.

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(7) A CAP approved by the Kentucky Department of Education shall be monitored and shall be an official document requiring the LEA to meet the specified activities. The Kentucky Department of Education shall not initiate further sanctions during the time period specified in the CAP unless requested by the LEA.

(8) Any noncompliance verified by monitoring shall be corrected within twelve (12) months from the date of the notification to the LEA of the noncompliance.

**Section 2. Special Education Program Found Noncompliant.** (1) The Kentucky Department of Education shall ensure that each LEA or other state agency responsible for providing the child's education complies with the LEA eligibility requirements contained in IDEA, 34 C.F.R. Part 300. To fulfill this obligation, the Kentucky Department of Education may implement the procedures established in this administrative regulation. (2) A special education program may be found noncompliant through deficiencies identified in:

- (a) Off-site or on-site monitoring that were not corrected by a corrective action plan;
- (b) A final decision issued in complaint investigations after appeals have been exhausted;
- (c) Decisions issued in due process hearings or by the Exceptional Children Appeals Board that have become final after the appeal rights have been exhausted; or
- (d) Review of other data routinely collected by the Kentucky Department of Education.

**Section 3. Causes for Imposing Sanctions.** (1) The Kentucky Department of Education shall employ progressive sanctions until compliance is achieved, if an LEA:

- (a) Fails to comply with a CAP, including not implementing the activities in an approved CAP;
- (b) Fails to comply with the final decision in a complaint investigation after appeals have been exhausted, or the decision of a due process hearing officer or the Exceptional Children Appeals Board that has become final after appeal rights have been exhausted;
- (c) Fails to manage the special education program in compliance with state and federal law;
- (d) Fails to manage funds in compliance with state and federal law;
- (e) Obtains funds through deception including falsifying application information for the purpose of obtaining funds; or
- (f) Has been brought before a court of competent jurisdiction and found in noncompliance with state and federal special education requirements after appeal rights have been exhausted.

(2) Sanctions may be imposed if an LEA fails or refuses to correct an identified deficiency. The Kentucky Department of Education shall give notice at least ten (10) school days prior to initiating actions related to sanctions. The Kentucky Department of Education shall remain in contact with the appropriate LEA staff during the imposition of sanctions until the deficiencies are remedied.

**Section 4. Sanctions.** (1) The Kentucky Department of Education shall employ intensive assistance for at least a two (2) year period, including providing consultation, training, and technical assistance, or assigning a special education mentor, to remedy deficiencies and obtain voluntary compliance before imposing sanctions beyond a corrective action plan (CAP).

(2) The Kentucky Department of Education shall employ less severe sanctions before more severe sanctions until the LEA is in compliance. Progressive sanctions may include the following: (a) Conditional approval of IDEA funds. If verifiable progress is not made in implementing a CAP, conditional funding shall be imposed. Conditions and timelines for continuing to receive IDEA funds shall be stated in the application approval letter or an attachment. Conditional funding may be employed for more than one year before imposing the next sanction, unless the LEA fails or refuses to meet the conditions or timelines. This sanction shall be lifted when the Kentucky Department of Education verifies compliance;

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(b) Withholding of payments of IDEA funds. If an LEA fails or refuses to meet the conditions or timelines in the conditional approval letter, IDEA funds may be withheld by the Kentucky Department of Education. The Kentucky Department of Education shall make no further payments to the LEA until the Kentucky Department of Education verifies that compliance has been achieved. If the LEA makes no effort to correct the deficiency within sixty (60) calendar days of withholding of IDEA funds, further sanctions may be imposed pursuant to appropriate provisions in KRS 156.132. Withholding shall remain in effect during the pendency of any additional sanctions;

(c) Withholding of Support Education Excellence in Kentucky (SEEK) add-on funds. SEEK add-on funds for exceptional children shall be withheld in trust as required in KRS 157.224. This sanction shall be lifted when the Kentucky Department of Education verifies compliance with substantive special education requirements; or

(d) Other actions available under state and federal law shall be employed as circumstances warrant.

(3) The Kentucky Department of Education may conduct an off-site or on-site review to validate compliance.

**Section 5. Opportunity for a Hearing.** Prior to the withholding of IDEA or SEEK add-on funds, the LEA shall be provided notice and an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

**Section 6. Child Count Audit.** (1) Child count figures submitted to the Kentucky Department of Education for the purpose of receiving funds under IDEA shall be subject to an audit validating the count. The Kentucky Department of Education shall conduct the child count audits prior to withholding funds pursuant to Section 4(2)(b) of this administrative regulation.

(2) If an LEA counts more children on its December 1 child count than are actually being served, or counts children who are ineligible to be counted for funding, the LEA shall reduce its child count or return the funds received for each misclassified child.

(3) The reduction may be initiated by:

(a) The LEA upon recognizing an error exists; or

(b) The Kentucky Department of Education through an on-site or off-site validation of the child count figures.

(4) Notice and an opportunity for a hearing under KRS Chapter 13B shall be provided before recovery of funds.

(5) Annually, the Kentucky Department of Education shall review and, as needed, select LEAs for a child count audit. An LEA may be selected for audit based on the following:

(a) Recurring noncompliances identified through off-site or on-site monitoring;

(b) Recurring substantiated complaints or final decisions from due process hearings or the Exceptional Children Appeals Board on similar issues;

(c) Failure to comply with a CAP within the specified timelines, or with the final decision in a complaint investigation after appeals have been exhausted, or with a hearing or appeal decision after appeals rights have been exhausted within specified timelines;

(d) Increases or decreases of total child counts, changes in categorical areas, or amendments to the original IDEA-B child count report that cannot be justified by district-supplied data like annual child count data and districtwide enrollment data or other district-supplied sources of data;

(e) Unusual child count data, such as, more than fifteen (15) percent of the total school population reported as having disabilities, no change in numbers from year to year, high numbers of low incidence populations, or unusually low percentages of children with disabilities when compared to similar LEAs; or

(f) Previous audits resulting in reductions in addition to the presence of any of the items listed in paragraphs (a) through (e) of this subsection.

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(6) Prior to initiating a child count audit, the Kentucky Department of Education shall: (a) Notify the LEA in writing of the pending audit and request a roster of children by school, teacher, age, and individual disability category as reported on the specific count being audited; (b) Verify the number of children on the roster with the number reported on the LEA's child count; and (c) Randomly select from the roster the educational records to be audited.

(7) The Kentucky Department of Education shall conduct an on-site record review based on the standards in 707 KAR Chapter 1 and analyze the data collected to determine the number of records out of compliance.

(8) The Kentucky Department of Education shall prepare a draft audit report which includes:

(a) The reason for the child count audit;

(b) The date the audit was conducted;

(c) The total number of records reviewed;

(d) An analysis of the data obtained during the audit;

(e) The specific reductions by disability; and

(f) Notice that the LEA has thirty (30) business days from the date of the report to submit additional information for each child to demonstrate compliance.

(9) The LEA may request copies of the data collected and used to produce the findings in the audit report and submit additional information for each child to demonstrate compliance. If the LEA submits additional information to demonstrate compliance, the Kentucky Department of Education shall have thirty (30) business days from receipt of the information to review the documentation and issue a final report.

(10) Within thirty (30) business days of the date of the final audit report, if applicable, the LEA shall submit to the Kentucky Department of Education an amended child count report and a CAP to address deficiencies identified during the audit.

(11) The Kentucky Department of Education shall certify the reduced count and submit a correction to the U.S. Department of Education and the Kentucky Department of Education's Division of Finance.

(12) The IDEA grant award for the fiscal year affected shall be recalculated and:

(a) If the child count reduction affects the current year's project then the amount of the recovery shall be subtracted from the original allocation and shall not be sent to the LEA the following year;

(b) If the reduction in grant award is for a year in which funds have already been expended, the LEA's grant shall be reduced the following year by the reduced amount in a manner that shall not disrupt current delivery of instructional services; or

(c) If the reduction affects an application for the fiscal year, the LEA shall be notified of the reduction of the recalculated grant award for the following year.

(13) Follow-up audit. The Kentucky Department of Education shall conduct a follow-up audit at the time the CAP is scheduled for completion. The Kentucky Department of Education shall verify that deficiencies have been corrected. If the follow-up visit verifies that the LEA has completed all CAP activities and no areas of noncompliance are identified, the Kentucky Department of Education shall issue a final report. (26 Ky.R. 2148; Am. 27 Ky.R. 508; eff. 8-14-2000; 33 Ky.R. 3496; 34 Ky.R. 567; eff. 11-5-2007.)

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