



Mason County Schools District Special Education Procedures

KSBA Model

July 2005

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KSBA MODEL
July 2005

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Definitions.

Section 1. Definitions.

(1) “Admissions and Release Committee (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) “Application” means a written request for funds, which addresses requirements or terms to be met on a continuing basis in order for funds to be released or paid to or on behalf of the applicant.

(4) “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.

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

(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.

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

(7) “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.

(8) “Case load 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.

(9) “Child with a disability” means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed 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 the 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 non-compliance.

(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; and

(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 is not retroactive (i.e., it 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 schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(17) “Corrective action plan (CAP)” means a written improvement plan describing activities and timelines developed to correct identified areas of non-compliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

(18) “Day” means calendar day unless otherwise indicated as business day or school day.

(19) “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.

(20) “Deficiency” means non-compliance.

(21) “Developmental delay (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; or

(b) Scores of one and one-half (1½) 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 normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

(22) "Education Records" means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232(g).

(23) "Emotional-behavioral disability (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:

(a) Severe deficits in social competence or appropriate behavior, which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;

(b) 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;

(c) A general pervasive mood of unhappiness or depression; or

(d) A tendency to develop physical symptoms or fears associated with personal or school

problems.

This term does not apply to children who display isolated (not necessarily one (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.

(24) “Enforcement” means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.

(25) “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.

(26) “Free appropriate public education (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;

(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.

(27) “Hearing impairment (HI)” means that a child has a hearing loss that has an adverse effect on the child’s educational performance, whether permanent or fluctuating, ranging from mild to profound (a loss of twenty-five (25) decibels (DB) or greater exists through speech frequencies of 500, 1000, and 2000 Hertz (Hz) in the better ear), and of a degree that the child is impaired in the processing of linguistic information through hearing, with or without

amplification.

(28) Homeless Children- The term 'homeless children' has the meaning given the term homeless children and youths in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

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

(30) "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 et.seq., as amended.

(31) "Independent education evaluation" means an evaluation conducted by a qualified examiner who is not employed by the MCSD responsible for the education of the child in question.

(32) "Individual education program (IEP)" means a written statement for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

(33) "Local educational agency (LEA)" means the Mason County School District (MCSD), 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.

(34) "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. Is typically manifested 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;

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

4. Is typically manifested during the developmental period.

(35) “Monitoring” means gathering and reviewing information to determine if a project or program meets state and federal special education requirements including the implementation of corrective action plans.

(36) “Multiple disabilities (MD)” means concomitant impairments that have an adverse effect on the child’s educational performance (e.g., mental disability-blindness, mental disability-orthopedic impairment, etc.), the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. Multiple disabilities does not mean deaf-blindness. A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition.

(37) “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 (e.g., sign language, Braille, or oral communication).

(38) “Orthopedic impairment (OI)” means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes an impairment caused by a congenital anomaly (e.g., clubfoot, absence of some member, etc.), an impairment caused by disease (e.g., poliomyelitis, bone tuberculosis, etc), and an impairment from other cause (e.g., cerebral palsy, amputations, and fractures or burns that causes contractures).

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

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

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

(40) “Parent” means:

(a) A natural or adoptive parent of a child;

(b) A guardian but not the state if the child is a ward of the state;

(c) An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives or an individual who is legally responsible for the child's welfare;

(d) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 7 or the Individuals with Disabilities Education Act; or

(e) A foster parent if the natural 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.

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

(42) "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 a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(43) "Private school children with disabilities" means children with disabilities enrolled by their parents in private schools and not children with disabilities enrolled in private schools upon referral by the MCSD.

(44) "Public expense" means that the MCSD 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.

(45) “Qualified personnel” means personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state.

(46) “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.

(47) “Related services” means transportation and such developmental, corrective, and 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, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school interpreting services, school nurse and health services, social work services in school, and parent counseling and training. ***Exclusion: The term does not include a medical device that is surgically implanted, or the replacement of such device.***

(48) “Sanctions” means actions (e.g., technical assistance, consultation, or training, among others) 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.

(49) “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.

(50) “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 and including physical education. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

(51) “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.

(52) “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 education curriculum included in the Program of Studies, 704 KAR 3:303.

(53) “Specific learning disability (SLD)” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in diminished ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions like perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(54) “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.

(55) “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 non-disabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

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

(a) Is designed within an outcome-oriented process (i.e., a process that outlines how a student will achieve goals consistent with the general education curriculum, as appropriate), that is focused on improving the academic and functional achievement of the child to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education/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 preferences and interests; and

(c) Includes:

1. Instruction;

2. Related services; and

3. Community experiences;

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

and

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

(57) “Traumatic brain injury (TBI)” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial

impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma. Traumatic brain injury means open or closed head injuries resulting in impairments in one (1) or more areas, including:

- (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.

(58) "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 (e.g., school, home, work and community).

(59) "Visual impairment (VI)" means a child has a vision loss, even with correction, as follows:

(a) Visual acuity even with prescribed lenses that is 20/70 or worse in the better eye; or

(b) Visual acuity that is better than 20/70 and the child has one (1) of the following conditions:

1. A medically diagnosed progressive loss of vision;
2. A visual field of twenty (20) degrees or worse;
3. A medically diagnosed condition of cortical blindness; or
4. A functional vision loss;

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

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

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

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

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

Free Appropriate Public Education.

Section 1. Free Appropriate Public Education. (1) The MCSD 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, 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 based on the child's unique needs and not on the child's disability. The MCSD provides and uses local, state, federal, and other fiscal resources as needed to provide the specially designed instruction and related services needed by children with disabilities. The resources may include interagency agreements and use of third party payments including insurances and Medicaid.

(2) The MCSD 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 MCSD as determined by the ARC. The State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

(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 non-medical 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. The MCSD shall ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

Section 4. Program Options. The MCSD 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, and career and technical education. All children, including children with disabilities, must be otherwise eligible for participation and thus meet established criteria for the specific programs, services and curriculum.

Section 5. Nonacademic Services. The MCSD shall take steps to provide all children with disabilities the nonacademic and extracurricular services and activities, which 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 MCSD;

(7) Referrals to agencies that provide assistance to individuals with disabilities, and

(8) Employment of students, including both employment by the MCSD and assistance in making outside employment available.

Section 6. Physical Education. The MCSD shall make available to every child with a disability:

(1) Physical education services, specially designed if necessary; or

(2) The opportunity to participate in the regular physical education program available to children without disabilities unless:

(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 child needs specially designed physical education as prescribed in the child's IEP.

Section 7. Assistive Technology. (1) The MCSD shall ensure that Assistive technology devices or Assistive technology services, or both, as defined in 707 KAR 1:280 (4) or (5) 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. The ARC determines the need for the use of the Assistive technology in non-school settings and specifies any such need in the IEP.

Section 8. Extended School Year Services. The MCSD shall ensure that extended school year

services 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 by the ARC and documented on the district form. In making this determination, the MCSD 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. Transfer Students.

(1) Transfer Within the Same State-- In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the MCSD shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the MCSD adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(2) Transfer Outside State-- In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the MCSD shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the MCSD conducts an evaluation , if determined to be necessary by the MCSD, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

(3) Transmittal of Records-- To facilitate the transition for transfer students:

(a) The new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, consistent with FERPA, i.e., pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

(b) The previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(c) When the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

Child Find, Evaluation, and Reevaluation.

Section 1. Child Find Requirements. The MCSD shall have in effect policies and procedures that plan and implement a child find system to locate, identify, and evaluate each child:

(1) Whose age is three (3) to twenty one (21);

(2) Who resides in a home, facility, or residence within the MCSD's geographical boundaries, including children with disabilities attending private schools (which includes home schools), children attending private schools located within the MCSD boundaries, children who are highly mobile such as migrant and homeless children, and foster children, or children in the custody of public welfare agencies as described in 704 KAR 7:090 and the IDEA, and students who are advancing grade to grade resulting from passing a grade but who still may have a disability;

(3) Who is either in or out of school;

(4) Who may need special education and related services; and

(5) For preschool age children with disabilities participating in early intervention programs assisted under Part C who will participate under programs assisted under Part B, the MCSD must ensure a smooth and effective transition from the early intervention program to preschool; and

(6) The MCSD shall participate in transition planning conferences for children with disabilities served by early intervention programs as described in the early intervention transition planning procedures.

(7) For a child previously served under Part C, an invitation to the MCSD's initial ARC meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system.

The MCSD has established a child find system with activities to locate, identify, and evaluate each child who may meet criteria one (1) through four (4) above. Additionally, the MCSD has community and parent involvement, informs personnel of due process and confidentiality procedures, and provides notice to the general public on an annual basis and before any major identification, location, or evaluation activity by publishing the notice in newspapers or other media with circulation adequate to notify parents within the MCSD geographical boundaries.

Specifically, the MCSD does the following:

(1) Prior to the beginning of the school year provides a public notice in the native language or other mode of communication of the various populations in the geographical boundaries of the MCSD to the extent feasible. Annually the DoSE requests information about families residing in the MCSD boundaries that are non-English speaking from the Director of Pupil Personnel.

(2) This notice may be combined with the FERPA public notice. The notice includes:

- a) A description of the children on whom the MCSD will maintain personally identifiable information;
- b) The types of information the MCSD wants to obtain;
- c) The methods the MCSD intend to use in gathering the information, including the sources from whom/ which information is gathered;
- d) How the MCSD will use the information it gathers;
- e) A summary of the MCSD's policies and procedures for storage, disclosure to third parties, retention and destruction of personally identifiable information; and
- f) A description of all of the rights of the parents and children regarding this information, including the rights under the Family Educational Rights and Privacy

Act and its implementing regulations.

(3) Annually, MCSD staff, in collaboration with the DoSE, provide information for school personnel about the procedures for referral of children who may have disabilities and need specially designed instruction and related services and other information as described in Comprehensive System of Personnel Development (CSPD), 707 KAR 1:330 and any CSPD Procedures and District Plan.

(4) Prior to the beginning of each school year, the DoSE consults with the representatives of private or parochial schools and agencies providing services to children (ages 3 to 21) for the purpose of:

- a) Creating public awareness of the MCSD child find procedures;
- b) Serving as a referral source to locate all children who may have an educational disability and need specially designed instruction and related services;
- c) Informing and gathering input from these community providers regarding the needs of potentially identifiable or identified students with disabilities in their locations; and
- d) Identifying transition needs for children with disabilities.

(5) Prior to the beginning of each school year, the DoSE conducts an awareness activity, including screening, with the general public to notify it of the need to find children with disabilities who need specially designed instruction and related services.

(6) The DoSE, or designee, receives intake information about potentially identifiable children with disabilities, reviews the information with the parents, and refers the children to appropriate agencies or MCSD staff.

Section 2. Referral System. The MCSD shall have a referral system that explains how referrals

from district or non-district sources will be accepted and acted upon in a timely manner as follows:

(1) Each MCSD school principal or designee is responsible for receiving referrals from any source on resident children. The referrals are in writing, signed, and dated by the individual submitting the referral on the district form. The building principal, or designee, assists any individual with knowledge about a child in understanding and completing the referral process.

(2) Upon receipt of a completed referral, the appropriate MCSD Representative determines the members of an ARC and schedules an ARC meeting in a timely manner to discuss the referral information and determine the need for evaluation according to due process procedures, including providing proper notice to parents using the district form.

(3) The ARC meets to:

a) Review the referral information to validate the support for the possibility of a disability requiring specially designed instruction;

b) Determine the need for a full and individual evaluation.

i) If none is needed, the MCSD Representative provides notice of refused action to the parents.

ii) If needed, the ARC determines the areas for evaluation related to the suspected disability and referral problems and the appropriate types of evaluation personnel.

iii) Propose a schedule for the evaluation to be conducted and completed. If needed, this proposed schedule may be adjusted during another ARC meeting.

iv) Document the ARC decision on the district form.

c) The appropriate MCSD Representative obtains written parental consent and arranges for the evaluation to be completed.

d) If parental consent is not given, the MCSD Representative contacts the DoSE and follows procedures defined in Procedural Safeguards.

Section 3. Evaluation and Reevaluation Procedures. (1) The MCSD 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;

(b) Provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

(c) Provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(d) Used for purposes for which the assessments or measures are valid and reliable.

(3) 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.

(4) 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, that may assist in determining (a) whether the child is a child with a disability and (b) the content of the child's IEP, including information related to enabling the

child to be involved in and progress in the general education curriculum described in the Kentucky Program of Studies, 704 KAR 3:303 (or for a preschool child, to participate in appropriate activities).

(5) A standardized test given to a child shall:

(a) Have been validated for the specific purpose for which they are 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.

(6) 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.

(7) 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).

(8) A single measure, procedure, or assessment shall not be used as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.

(9) 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 as identified by the ARC on the district

form.

(10) 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.

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

(12) Assessment tools and strategies shall be used that provide relevant information that directly assist and are 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, as appropriate, 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 observations; and
- (c) Observations by teachers and related services providers.

(13) 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, or in the case of a reevaluation of the child, whether the child continues to have a disability and the educational needs of the child;

(b) The present levels of performance and academic achievement and educational 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 education curriculum.

(14) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(15) The MCSD shall ensure that assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(16) The MCSD 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 or to determine the child's educational needs, the MCSD Representative shall notify the child's parents:

(a) Of that determination and reasons for it; and

(b) Of the right of the parents to request an assessment to determine whether, for purposes of services, the child continues to be a child with a disability or to determine the child's educational needs.

(17) The MCSD shall not be required to conduct a reevaluation (reassessment), if after review of the existing data, the ARC determines no reevaluation (reassessment) is necessary to determine whether the child continues to be a child with a disability or to determine the child's

educational needs, unless the child's parent requests the reevaluation (reassessment). The MCSD ARC Chairperson obtains written parental consent before conducting any reassessment even if a parent requested the reassessment.

(18) A reevaluation shall not be conducted more frequently than once a year, unless the parent and the MCSD agree otherwise.

(19) The MCSD shall ensure a reevaluation, which may consist of the review described in subsection (12) of this section, is conducted, if the MCSD determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parent or teacher requests it, but at least once every 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 education curriculum.

(20) The MCSD shall evaluate a child with a disability in accordance with this administrative regulation and procedure before determining that the child is no longer a child with a disability.

(21) To the extent possible, the MCSD shall encourage the consolidation of reevaluation meetings for the child and other ARC meetings for the child.

Determination of Eligibility.

Section 1. Determination of Eligibility. (1) Upon completion of the tests and other evaluation materials, the ARC shall determine whether the child is a child with a disability who meets one

or more of the eligibility categories as defined in 707 KAR 1:280 to the extent that specially designed instruction is required in order for the child to benefit from education. The MCSD 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 lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965); or lack of instruction in math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

(3) An evaluation shall not be required before the termination of a child's eligibility due to graduation with a regular high school diploma or exceeding the age eligibility for FAPE.

(4) In making eligibility determinations, the MCSD shall draw upon information from a variety of sources, which may include:

- (a) Aptitude and achievement tests;
- (b) Parental input;
- (c) Teacher recommendations;
- (d) Physical condition;
- (e) Social or cultural background; and
- (f) Adaptive behavior.

(5) The ARC shall ensure that information obtained from all of these sources is documented and carefully considered.

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

(7) If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for that 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 made by the child's ARC and at least one person qualified to conduct individual diagnostic examinations of children, which may include a school psychologist, speech-language pathologist, or remedial reading teacher.

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

(a) The child does not achieve commensurate with his age and ability levels in one (1) or more of the areas listed in this subsection, if provided with learning experiences appropriate for the child's age and ability levels; and

(b) The child has a severe discrepancy as identified by a validated regression method between achievement and intellectual ability in one (1) of the following areas:

1. Oral expression;
2. Listening comprehension;
3. Written expression;
4. Basic reading skills;
5. Reading comprehension;
6. Mathematics calculation; or
7. Mathematics reasoning.

(3) The ARC shall not identify a child as having a specific learning disability if the severe discrepancy between ability and achievements is primarily the result of:

- (a) A visual, hearing, or motor impairment;
- (b) Mental disability;
- (c) Emotional-behavioral disability; or
- (d) Environmental, cultural, or economic disadvantage.

(4) At least one (1) team member other than the child's regular education teacher shall observe the child's academic performance in the regular classroom setting. 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.

(5) The ARC shall develop a learning disability (LD) written report, utilizing the district learning disability (LD) written report form. This report 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 there is a severe discrepancy between achievement and ability that is not

correctable without special education and related services; and

(g) The determination of the ARC concerning the effects of environmental, cultural, or economic disadvantage.

(6) Each ARC member shall certify in writing whether the report reflects his conclusion. If it does not reflect his conclusion, the team member shall submit a separate statement presenting his conclusions using a district form.

Individual Education Program.

Section 1. Individual Education Programs. (1) The MCSD shall ensure that an IEP is developed and implemented for each child with a disability served by the MCSD, and for each child with a disability placed in or referred to a private school or facility by the MCSD. The ARC shall develop the IEP for each child and document it on the district IEP form.

(2) Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the MCSD, shall ensure that an IEP is developed, documented, and implemented for each child with a disability placed in these schools by an ARC. The MCSD DoSE will be responsible for inviting a representative of KSB or KSD to the ARC meeting and for all paperwork for the initial placement including the IEP, notice of proposed and refused action, etc. If placement occurs, the MCSD will ensure that copies of special education records and cumulative records are made available to KSB or KSD personnel. After initial placement, KSB/KSD will be asked to be responsible for maintaining the records of the child and copies made available to MCSD's DoSE.

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

(4) The MCSD 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) The MCSD (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 for the special education and related services to the child is being

determined unless the ARC recommends implementation at a different specified time.

(6) The MCSD 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) The MCSD shall ensure that each child has an ARC which includes the membership in 707 KAR 1:320(3) and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

(2) The MCSD 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 will be evaluated; and

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

Exception-- The sixty (60) school day timeframe for determining eligibility shall not apply to a local educational agency if-- (I) a child enrolls in a school served by the local educational agency after the relevant timeframe has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability, but only if the subsequent local educational agency is making sufficient progress to ensure a prompt

completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(3) Within this sixty (60) school day period, the MCSD 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.

(4) The MCSD ARC Chairperson shall ensure that the ARC:

(a) Reviews each child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(b) Revises the IEP as appropriate to address:

1. Any lack of expected progress toward the annual goals;

2. Any lack of expected progress in the general education curriculum, where appropriate;

3. The results of any reevaluation;

4. Information about the child provided by, or to, the parents;

5. The child's anticipated needs; and

6. Other matters.

Section 3. ARC Membership. (1) The MCSD ARC Chairperson 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 such child (if the child is, or may be, participating in the regular education environment) to provide information about the general education curriculum for same aged peers. If the child is served by more than one regular

education teacher, the MCSD ARC Chairperson selects a regular education teacher or teachers qualified to teach a child of his/her age. The regular education teacher(s) selected shall be in attendance at the ARC meeting during development, review, and revision of the IEP, as appropriate.

(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, where appropriate, not less than one (1) special education provider of such child;

(d) A Representative of the MCSD who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, and is knowledgeable about the general education curriculum and the availability of the resources of the MCSD. The Superintendent, in consultation with the DoSE, will recommend to the Board for approval a list of MCSD Representatives by job or position title. The Superintendent, or designee, may designate which specific staff member on that approved list will serve as the MCSD Representative for any ARC meeting;

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

(f) Individuals who have knowledge or special expertise regarding the child at the discretion of the parent or the MCSD;

(g) Related services personnel, as appropriate; and

(h) The child, whenever appropriate.

(2) If the purpose of the ARC is to discuss transition services for a child with a disability as described in Section 4 (3) and Section 4 (4) of this procedure, the child shall be invited to the ARC. If the student does not attend the meeting, the ARC shall take other steps to ensure that the

student'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. If the representative of the other public agency does not attend, the MCSD ARC Chairperson or designee shall take other steps to obtain participation of the other agency in the planning of any transition services.

Section 4. Parent Participation. (1) The MCSD shall ensure that one or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Parents shall be notified of the meeting early enough to ensure that they will have an opportunity to attend, and the meeting shall be scheduled at a mutually agreed on time and place.

(2) The MCSD Representative 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 by role/title; and

(e) Information that the parents may invite people with knowledge or special expertise of the child to the meeting.

Meeting notice will be provided 7 calendar days prior to the meeting and accompanied by notice of Parents' Procedural Safeguards (Parents' Rights). In disciplinary situations, notice must be provided to parents as provided in the Discipline Procedures section of these procedures.

(3) If the child is at least fourteen (14) years of age, the invitation shall indicate that a purpose of the meeting will be the development of a statement for the need for transition services of the child and indicate 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) If the child is at least sixteen (16) years of age, the invitation shall indicate that a purpose of the meeting is the consideration of needed transition services for the child and shall include the identity of any other agency that is invited to send a Representative and shall indicate that the child is invited. This subsection shall apply to a child younger than sixteen (16) years of age if determined to be appropriate by the ARC.

(5) The MCSD ARC Chairperson 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 MCSD is unable to convince the parent that he should attend. The MCSD shall have a record (in the special education records of the child) 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, the MCSD ARC Chairperson shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for the parents with deafness or whose native language is other than English.

(8) The MCSD ARC Chairperson or designee shall give the parent a copy of the child's IEP at no cost to the parent at the conclusion of the ARC meeting or mails a copy with the notice

of proposed or refused action, 5 school days after the meeting if the parents fail to attend.

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; and

(c) As appropriate, the results of the child's performance on any general state or district wide assessments programs.

(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, the use of positive behavioral interventions and supports, and other strategies, 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 devices or services.

(3) All the factors listed in this Section 5 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 5 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, strategies, and supports 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 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 educational performance, i.e., academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum as 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 for children with disabilities who take alternate assessments, and including benchmarks or short-term objectives related to:

1. Meeting the child's needs that result from the disability to enable the child to be involved in and progress in the general education 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. Meeting the child's other educational needs that result from the disability.

(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 education curriculum;

(c) Participate in extracurricular and other nonacademic activities; and

(d) Be educated and participate with other children with or without disabilities.

(9) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with non-disabled children in regular classes and in extracurricular and nonacademic activities.

(10) An IEP shall contain a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on

State and district-wide assessments. These accommodations shall be based on the requirements contained in 703 KAR 5:070, Inclusion of special populations in the state-required assessment and the accountability programs.

(11) If the ARC determines the child shall take an alternate assessment on a particular State or district-wide assessment of student achievement, a statement of why-- (a) the child cannot participate in the regular assessment; and

(b) the particular alternate assessment selected is appropriate for the child. 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 stated in terms of minutes per week, day, or as a range, location (i.e., regular or special education), and duration of those 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) How and when the parents will be regularly informed of that progress, at least as often as the school or MCSD informs parents of the progress of all children. The MCSD shall inform parents of the progress toward annual goals on the same schedule as the progress reporting system for all students.

(14) A parent shall be informed of:

(a) Their child's progress toward the annual goals; and

(b) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Section 6. Transition Services. (1) Beginning at age fourteen (14), or younger 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) For a child beginning at age sixteen (16), or younger if determined appropriate by the ARC, the IEP for a child with a disability shall include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills; a statement of needed transition services (including courses of study) for the child, and including, where appropriate, a statement of the interagency responsibilities or any needed linkages to assist the child in reaching those 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) 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 his rights under 707 KAR Chapter 1 and that the rights will transfer to the child upon reaching the age of majority.

(5) If an agency, other than the MCSD, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the MCSD (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.

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

(2) The Director of Special Education shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the DoSE 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 MCSD.

(4) If a private school or facility initiates the meetings, the MCSD shall ensure that the parents and MCSD 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 MCSD in a private school or facility, the MCSD shall remain responsible for compliance with 707 KAR Chapter 1.

(5) An LEA that places or refers a child with a disability in 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 MCSD including general education curriculum standards; and

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

Section 8. IEP Accountability. (1) The MCSD 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 to achieve the goals and objectives or benchmarks listed in the IEP.

(2) The MCSD shall be responsible for including children with disabilities in the state-wide assessment as provided in 703 KAR Chapter 5.

(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.

Comprehensive System of Personnel Development.

Section 1. Comprehensive System of Personnel Development. The MCSD shall have information filed with the Kentucky Department of Education to demonstrate that all personnel necessary to carry out the requirements in 707 KAR Chapter 1 are appropriately and adequately prepared. As part of this information, the MCSD shall take steps to provide that all personnel who work with children with disabilities have the skills and knowledge necessary based on certification administrative regulations contained in 704 KAR Chapter 20, to meet the needs of the children. This information shall include a description of how the MCSD will:

(1) Provide general and special education personnel with the content knowledge and collaborative skills to continue to meet the needs of children with disabilities. Continuing education needs are met through a variety of MCSD activities which may include state initiated activities, regional activities, higher education activities, and other professional development sources. Each year school personnel needs for training, materials, resources, and technical assistance shall be considered;

(2) Enhance the ability of teachers and others to use strategies, including behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the MCSD will, if appropriate, adopt promising practices, materials, and technology.

(4) Recruit and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education and related services. The MCSD employs or contracts with qualified personnel to

provide specially designed instruction and related services. The MCSD's policies and procedures for personnel selection and employment are consistent with state requirements which apply to individuals providing specially designed instruction and related services. The MCSD takes steps to recruit and retain personnel;

(5) Ensure that the information is integrated, to the maximum extent possible, with other professional development plans and activities developed and carried out by the MCSD; and

(6) Provide for the joint training of parents and special education, related services, and general education personnel. Training offerings are provided through various means, which may include parent teacher organizations and family resource centers.

Procedural Safeguards

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) The MCSD shall provide parents a written notice of ARC meetings in accordance with administrative regulation.

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

(a) Teaching methodology if those issues are not addressed in the child's IEP;

(b) Lesson plans if those issues are not addressed in the child's IEP;

(c) Coordination of service provision if those issues are not addressed in the child's IEP; or

(d) Preparatory activities 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) Upon receiving the request, the DoSE or designee shall provide information to the parent about where an independent educational evaluation may be obtained and the MCSD's applicable criteria for independent educational evaluations.

(3) The parent's request for an independent educational evaluation shall be subject to the following:

(a) The MCSD shall be given the opportunity to conduct a complete evaluation on the child prior to the request;

(b) Upon receiving the request the MCSD shall, without unnecessary delay:

1. Initiate a due process hearing to show that its evaluation is appropriate; or
2. Ensure that an independent educational evaluation is provided at public expense unless the MCSD demonstrates in a due process hearing that the evaluation obtained by the parent did not meet MCSD criteria;

(c) The MCSD may ask for the parent's reasons why he objects to the MCSD's evaluation, however, the parent shall not be required to respond and the MCSD shall not delay its action under paragraph (b) of this subsection while waiting for a response from a parent; and

(d) 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 MCSD uses when it initiates an evaluation. Aside from these criteria, the MCSD shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense. The DoSE shall provide this criteria to the MCSD Representative.

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

(5) If the parent obtains an independent educational evaluation at private expense and it meets the agency criteria, results of the evaluation shall be considered by the MCSD in any decision made with respect to the provision of a free appropriate public education (FAPE) to the

child.

(6) 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 of Procedural Safeguards.

(1) The DoSE or MCSD ARC Chairperson shall provide written notice, which may be by email if the parent and the MCSD agree (parent agreement shall be documented by the appropriate MCSD representative, or designee) to the parents of a child with a disability a reasonable time before the MCSD:

(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) This notice shall include:

(a) A description of the action proposed or refused by the MCSD;

(b) An explanation of why the MCSD proposes or refuses to take the action;

(c) A description of any other options that the MCSD considered and the reasons why those options were rejected;

(d) A description of each evaluation procedure, test, assessment, record, or report the MCSD used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the MCSD's proposal or refusal;

(f) A statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 CFR Section 300.504 and IDEA, including the time period in which to file a complaint or due process hearing, the opportunity for the

MCS D to resolve the complaint or hearing issue(s), the time period in which to file civil actions, 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.

The MCS D Representative shall give notice of proposed or refused action to the parents at the end of the meeting if a parent attends, or by mailing the notice (which may consist of the meeting summary) to parents who did not attend the meeting within 5 school days after the meeting. The proposed action may be implemented immediately if parents received notice in the meeting and within 10 school days after the meeting if no parent attended the meeting, and if no due process hearing has been requested challenging the proposed or refused action.

(3) The notice 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 MCS D shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of this translation. The native language of the parent of a child is the definition of native language used in 707 KAR 1:280(36).

The MCS D Representative, after consulting with the DoSE, obtains the necessary translation or interpretation, if feasible. The MCS D Representative keeps copies of all correspondence involved in securing the necessary interpretation or translation in his/her administrative files.

(4) A copy of the Procedural Safeguards (Parent's Rights) provided by the DoSE shall be

given to the parents of a child with a disability:

- (a) Upon initial referral or parental request for evaluation;
- (b) Upon invitation of each ARC meeting;
- (c) Upon reevaluation of the child; and
- (d) Upon receipt of a KDE special education complaint or request for a due process hearing
- (e) Upon request by a parent.

(5) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1; 34 CFR Section 300.504; and IDEA, and be written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner.

(6) Alternative Means of Meeting Participation -- When conducting ARC meetings and placement meetings, or meetings under Section 615(e) and Section 615(f)(1)(B) of the IDEA, and carrying out administrative matters under Section 615 of the IDEA (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and the MCSD may agree to use alternative means of meeting participation, such as video conferences and conference calls. (Parent agreement shall be documented by the appropriate MCSD representative, or designee).

Section 4. Parental Consent.

(1) The MCSD_ARC Chairperson shall obtain informed, written parental consent before conducting an initial evaluation (assessment) or reevaluation (reassessment) and before the initial provision of specially designed instruction and related services. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(a) If the child is a foster child, or is in the custody of a public child welfare agency, and is not residing with the parent, but parental rights have not been terminated, the MCSD shall make reasonable efforts to obtain informed consent from the parent for any consent required under IDEA, including consent for an initial evaluation. A judge may order that someone other than the parents may give consent for initial evaluation. Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation.

(2) If a parent of a child with a disability refuses consent for an initial evaluation or a reevaluation, the MCSD may continue to pursue those evaluations by requesting a due process hearing or using the mediation procedures. Determinations as to filing for due process hearings or appeals on behalf of the district shall be made by the Board of Education, except that the Superintendent, or designee, may request due process hearings and extensions due to substantial likelihood of harm/dangerousness by, or of, a student. Determinations as to filing for mediation on behalf of the district shall be made by the Superintendent, or designee.

(3) Parental consent shall not be required for reevaluation if the MCSD can demonstrate that it has taken reasonable measures to obtain the consent, and the child's parent has failed to respond. To show the reasonable measures taken, the MCSD shall keep documentation, which may include:

(a) The 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) Records of the visits made to the parent's home or place of employment and the results of those visits. The MCSD special education teacher or ARC Chairperson shall document attempts to obtain parental consent, which may include attempts to obtain parental consent through any of the means described in a, b, or c above. The MCSD Representative maintains

documentation of these attempts in the child's special education records.

Section 5. Right to Mediation and Due Process Hearings.

(1) The MCSD 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) Except for initial placement, a parent or the MCSD 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

(a) If the parent does not provide consent for an initial evaluation or the parent fails to respond to a request to provide the consent, the MCSD may pursue the initial evaluation of the child by utilizing the procedures described in section 615 of the IDEA, except to the extent inconsistent with State law relating to such parental consent.

(b) Exception: If the parent refuses consent for provision of initial services, the MCSD shall not provide special education and related services to the child by utilizing a due process hearing.

(c) Effect on Agency Obligations-- If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent within a reasonable timeframe specified by the MCSD to the parent-- (i) the MCSD shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child or for the failure to provide such child with the special education and related services for which the MCSD requests such consent; and

(ii) the MCSD shall not be required to develop an IEP under this section for the child for the special education and related services for which the MCSD requests such consent. (The MCSD ARC Chairperson shall document the parent refusal or failure to respond).

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

(4) The DoSE or designee shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or the MCSD initiates a hearing. The DoSE shall provide the MCSD Representative with a list of these legal or other relevant services.

Section 6. 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 Section 5 and Section 7 of this administrative regulation or 34 CFR Section 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and

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

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

(a) Not be an employee of: (i) Any LEA or state agency described in 34 CFR Section 300.194; or

(ii) Any part of the Kentucky Department of Education that is providing direct services to a child who is the subject of the mediation process;

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

KDE will provide training to the mediators including the following items: 1) an agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement, and 2) discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and the parties to the mediation process will be required to sign a confidentiality pledge prior to the commencement of the process.

(5) Written Agreement- In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that-- (a) states all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

(b) is signed by both the parent and a representative of the MCSD who has the authority to bind the MCSD; and

(c) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(6) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

Section 7. Hearing Rights. (Due Process Hearings)

(1) Resolution Session-- (a) Preliminary Meeting- Prior to the opportunity for an impartial due process hearing , the MCSD shall convene a meeting with the parents and the relevant member or members of the ARC who have specific knowledge of the facts identified in the complaint-- (i) within 15 days of receiving notice of the parents' complaint;

(ii) which shall include a representative of the MCSD who has decision-making authority on behalf of the MCSD;

(iii) which may not include an attorney of the MCSD unless the parent is accompanied by an attorney. (The MCSD Special Education Director shall inquire as to whether the parent is bringing an attorney); and

(iv) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the MCSD is provided the opportunity to resolve the complaint, unless the parents and the MCSD agree in writing to waive such meeting, or agree to use the mediation process.

(b) Hearing-- If the MCSD has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

(c) Written Settlement Agreement-- In the case that a resolution is reached to resolve the complaint at a meeting described in subsection (1), the parties shall execute a legally binding agreement that is-- (i) signed by both the parent and a representative of the MCSD who has the authority to bind the MCSD; and

(ii) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(d) Review Period-- If the parties execute an agreement pursuant to subsection (c), a party may void such agreement within 3 business days of the agreement's execution.

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

(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) In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;

(e) A description of the nature of the problem; and

(f) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

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

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

(5) Due Process Complaint Notice---The due process complaint notice shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of the law.

(6) MCSD Response to Complaint--(a) In General-- If the MCSD has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process notice, the MCSD shall, within 10 days of receiving the complaint, send to the parent a response that shall include-- (i) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(ii) a description of other options that the ARC considered and the reasons why those options were rejected;

(iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) a description of the factors that are relevant to the agency's proposal or refusal.

(aa) Sufficiency- A response filed by a local educational agency pursuant to subsection (6) shall not be construed to preclude the LEA from asserting that the parent's due process complaint notice was insufficient where appropriate.

(bb) Other Party Response-- Except as provided in subsection (6), the non-complaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint.

(cc) Timing-- The party providing a hearing officer notification that a complaint is insufficient shall provide the notification within 15 days of receiving the complaint.

(dd) Determination-- Within 5 days of receipt of the notification that the complaint is insufficient, the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of the law, and shall immediately notify the parties in writing of such determination.

(ee) Amended Complaint Notice-- In General --A party may amend its due process complaint notice only if-- (I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution session held pursuant to subsection 1; or

(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(ff) Applicable Timeline-- The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline for the resolution session.

(7) *Due Process Hearing Procedures* -- Refer to the KDE Special Education Procedures Manual for other provisions regulating due process hearings.

(1) Statute of Limitations-- A parent, public agency, or eligible student may only request the administrative due process hearing within 3 years of the date the parent, public agency, or eligible student knew about the alleged action that forms the basis for the complaint, unless a longer period is reasonable because the violation is continuing. This 3 year limit shall not limit the introduction of evidence older than 3 years if the evidence is relevant to the complaint and shall not apply to the parent or the eligible student if the parent or eligible student was prevented from requesting the hearing due to:

(a) Failure of the local educational agency to provide prior written or procedural safeguards notices

(b) False representations that the local educational agency was attempting to resolve the problem forming the basis of the complaint; or

(c) The local educational agency's withholding of information relevant to the hearing issues from the parent.

(d) The local educational agency's withholding of information from the parent that was required under IDEA to be provided to the parent.

(8) Subject Matter of Hearing-- The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the complaint notice, unless the other party agrees otherwise.

(9) 13B provides -- Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. A request for the disqualification of a hearing officer shall be answered by the agency head within sixty (60) days of its filing. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding. Requests for disqualification of a hearing officer shall be determined by the agency head. Requests for disqualification of a hearing officer who is a member of the agency head shall be determined by the majority of the remaining members of the agency head. (b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:

(a) Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;

(b) Participating in an ex parte communication which would prejudice the proceedings;

c) Having a pecuniary interest in the outcome of the proceeding; or

(d) Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) The IDEA provides hearing officers shall-- (i) possess knowledge of, and the ability to understand, the provisions of IDEA, Federal and State regulations pertaining to IDEA,, and legal interpretations of IDEA by Federal and State courts;

(ii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iii) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(iv) Not be (I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or (II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.:

34 C.F.R. Section 300.508 provides: A person who is otherwise qualified to conduct a hearing is not an employee of KDE or the LEA solely because he or she is paid by KDE or the LEA to serve as a hearing officer. KDE will keep a list of the persons who serve as hearing officers and a statement of the qualifications of each of those persons.

(10) 13B.050 Notice of Administrative Hearing provides.:

(a) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in

advance of the date set for the hearing, unless otherwise required by federal law. An agency shall make reasonable effort to schedule a hearing on a date that is convenient to the parties involved.

(b) The notice required by subsection (a) of this section shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the parties, or by personal service, with the exception of notices of Personnel Board hearings and all board orders which may be served by first-class mail. Service by certified mail shall be complete upon the date on which the agency receives the return receipt or the returned notice.

(c) The notice required by this section shall be in plain language and shall include:

(i) A statement of the date, time, place, and nature of the hearing;

(ii) The name, official title, and mailing address of the hearing officer;

(iii) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the agency;

(iv) A statement of the factual basis for the agency action along with a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(v) A reference to the specific statutes and administrative regulations which relate to the issues involved and the procedure to be followed in the hearing;

(vi) A statement advising the person of his right to legal counsel.

(vii) A statement of the parties' right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing and any exculpatory information in the agency's possession; and

34 C.F.R. Section 300.509 (a)(3) states that any party to the hearing has a right to “prohibit

the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing.”

(viii) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.

(11) Conduct of hearing.

(a) IDEA states that any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(b) 13B.080 provides any party to a hearing-- (i) has the right to present evidence and confront, cross-examine, and compel the attendance of witnesses.

(ii) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing.

(iii) the right to written, or, at the option of the parents, electronic findings of fact and decisions.

IDEA provides that not less than 5 business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

13B provides-- A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a pre-hearing order has been issued, the hearing officer shall regulate the hearing in conformity with the pre-hearing order.

34 C.F.R. Section 300.509 (c)(1) states the “parents involved in the hearing have the right to have the child who is the subject of the hearing present and to have the hearing open to the public.” (C)(2) states that “the record of the hearing and the finding of fact and decisions...must be provided at no cost to parents.”

(12) 13B.100 Prohibited communications provides-- (a) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing officer shall not communicate off the record with any party to the hearing or any other person who has a direct or indirect interest in the outcome of the hearing, concerning any substantive issue, while the proceeding is pending.

(b) The prohibition stated in subsection (a) shall not apply to:

(i) Communication with other agency staff, if the communication is not an ex parte communication received by staff; and

(ii) Communication among members of a collegial body or panel which by law is serving as a hearing officer.

(c) If an ex parte communication occurs, the hearing officer shall note the occurrence for the record, and he shall place in the record a copy of the communication, if it was written, or a memorandum of the substance of the communication, if it was oral.

(13) Decision of Hearing Officer-- (a) In General--- Subject to subsection (b), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(b) Procedural Issues-- In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies-- (i) impeded the child's right to a free appropriate public education;

(ii) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

(iii) caused a deprivation of educational benefits.

(c) Rule of Construction-- Nothing in this subsection shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(14) Rule of Construction- Nothing in this subsection shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(15) 34 C.F.R. Section 510 states that (a) decision made in a hearing is final, except that any party involved in the hearing may appeal the decision pursuant to 707 KAR 1:340, Section 8. The Exceptional Children Appeals Board (ECAB) shall conduct an impartial review of the hearing. The ECAB, in conducting the review, shall examine the entire hearing record, ensure that the procedures at the hearing were consistent with the requirements of due process, seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in KRS 13B and IDEA apply. The ECAB shall; afford the parties an opportunity for oral or written argument, or both, at the discretion of the ECAB; make an independent decision on completion of the review; and give a copy_of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(16) The decision made by the ECAB is final unless a party brings a civil action under 34 C.F.R. Section 300.512 or IDEA.

(17) 34 C.F.R. Section 300.511 states that KDE shall ensure that not later than 45 days after the receipt of a request for a hearing a final decision is reached in the hearing, and a copy of the decision is mailed to each of the parties. KDE shall ensure that not later than 30 days

after the receipt of a request for a review a final decision is reached in the review, and a copy of the decision is mailed to each of the parties. The hearing officer or ECAB, respectfully, may grant specific extensions of time beyond the periods set out above at the request of either party or on their own motion. Each hearing and each review by ECAB involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Section 8. 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 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) 34 C.F.R. Section 300.512 states that any party aggrieved by the findings and decisions of the ECAB has the right to bring a civil action with respect to the issues raised initially at the hearing. The action may be brought in State circuit court or in a district court of the United States without regard to the amount in controversy. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(4) 13B.160 Judicial Appeal -- Any aggrieved party may appeal any final judgment of the Circuit Court or U. S. District Court under this chapter to the appropriate Court of Appeals in accordance with the Kentucky or Federal Rules of Civil Procedure

(5) In any action or proceeding brought under section 615 of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

(a) to a prevailing party who is the parent of a child with a disability;

(b) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(6) Determination of amount of Attorneys' Fees- Fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(7) Funds under Part B of IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of IDEA and subpart E of the Federal regulations. A LEA or KDE are not precluded from using funds from Part B of IDEA for conducting an action or proceeding under section 615 of IDEA.

Section 9. Expedited Due Process Hearings

(1) In accordance with 34 C.F.R. 300.528, all hearing rights afforded the parties in regular due process hearings will apply except that the hearing shall occur within 20 school

days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(2) Decisions from expedited due process hearings may be appealed in the same manner as decisions from regular due process hearings.

Section 10. Stay Put

(1) Except as provided in IDEA and Federal and state law concerning interim alternative educational setting placements, during the pendency of any administrative or judicial proceeding, the child involved in the hearing or appeal shall remain in his current educational placement, unless the MCSD and the parent agree to another placement.

(2) 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.

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

Section 11. Representation of Children.

(1) The MCSD Special Education Director shall ensure the rights of a child are protected by determining a legally appropriate educational representative for the child. A MCSD shall appoint a surrogate parent to make educational decisions for the child if:

- (a) No parents as defined in 707 KAR 1:280 can be identified;
- (b) The MCSD, after reasonable efforts, cannot discover the whereabouts of the parents; or
- (c) The child is a ward of the state as defined in 707 KAR 1:280 and these procedures.

(d) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)). The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

(2) The MCSD Special Education Director reviews appropriate records and may contact appropriate state agencies to assist with the determination of the need for a surrogate parent.

(3) The MCSD shall have a procedure for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The educational representative of the child shall have all the rights afforded parents under Part B of IDEA and 707 KAR Chapter 1 to make decisions about educational issues for a child and to give written informed consent when necessary under administrative regulation. The MCSD Special Education Director assures that each child is represented by an appropriate educational representative at all decision making points in the process of identification, evaluation, placement and provision of a free and appropriate public education.

The MCSD Special Education Director attempts to verify the location, legal status and whereabouts of natural or adoptive parents or legally appointed guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child or the provision of a free and appropriate public education to the child.

As soon as possible after the referral is completed, the MCSD Representative determines if the child is emancipated, and therefore represents himself in educational decision-making or must be represented by an adult such as a natural or adoptive parent, legal guardian, person acting as a parent, or surrogate parent.

If the MCSD ARC Chairperson determines the child is to be represented by a legal guardian, or is emancipated by court order or marriage, the MCSD Representative contacts the DPP, who is responsible for obtaining an official copy of the court order, appointing the

guardian, or emancipating the student, or official proof of the marriage. The official copy of the court order or proof of marriage document is placed in the educational records of the child.

The MCSD Representative may determine that a foster parent may serve as a parent if the requirements of 707 KAR 1:280(39)(e) are met.

The MCSD Representative may determine there is an individual who may “act as a parent” under 707 KAR 1:280(39) (c).

(4) The MCSD shall make reasonable efforts to ensure assignment of a surrogate parent not more than thirty (30) days after determination of the need for a surrogate. A surrogate:

(a) Shall not be an employee of the Kentucky Department of Education, the MCSD, or any other public agency that is involved in the education or care of the child;

(b) Shall not have an interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(5) A surrogate parent may be an employee of a private agency that provides non-educational care for the child if that person meets the standards in this section. A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the MCSD solely because he or she is paid by the MCSD to serve as a surrogate parent.

(6) If the child is a foster child, or is in the custody of a public child welfare agency, a judge may appoint a surrogate parent provided the surrogate meets the surrogate parent criteria.

(7) 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.

(8) The DoSE, or designee, develops a pool of potential surrogate parents. The DoSE maintains a file of eligible surrogate parent applications, including the names, addresses, phone numbers and training status of the individuals who have agreed to serve as surrogate parents.

(9) The DoSE, or designee, makes arrangements for training persons selected as surrogate parents to assist them with acquiring knowledge and skills to effectively represent the children.

(10) If a surrogate is assigned because the parents cannot be located, the DoSE, or designee, sends a notice of the intent to assign a surrogate parent to the last known address of the child's natural or adoptive parents or legal guardians. If the whereabouts of the natural or adoptive parents or legal guardians become known, future notices of meetings must be sent to, and required signatures must be obtained from, a natural or adoptive parent or legal guardian of the child.

(11) The DoSE, or designee, notifies the surrogate in writing of termination of the need for the surrogate parent due to expiration of the assignment period; if the whereabouts of the natural or adoptive parents or legal guardians become known; upon emancipation of the child; or if the surrogate no longer meets the qualifications and criteria to serve as a surrogate parent.

(12) The DoSE maintains written documentation relative to any disagreement regarding the choice of a surrogate in his/her administrative files.

(13) When a child with a disability reaches the age of majority, or is emancipated under Kentucky law, 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. The MCSD ARC shall notify the child with a disability and the parents of the transfer of the rights.

Section 12. Discipline Procedures

Notification to Parents-- Not later than the date on which the decision to take disciplinary action is made the building principal , or designee, shall notify the parents of that decision, and of all procedural safeguards accorded under this section (Parents' Rights.)

To the extent removal would be applied to children without disabilities, school personnel may remove a child with a disability from the child's current placement for not more than a total of ten (10) school days for a violation of school rules.

The MCSD need not provide services during periods of removal under Section 300.520(a)(1) to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

(1) Suspension of exceptional children, as defined in KRS 157.200, shall be considered a change of educational placement if:

(A) The child is removed for more than ten (10) consecutive days during a school year; or

(B) The child is subjected to a series of removals that constitute a pattern because the removals accumulate to more than ten (10) school days during a school year and because of other factors, such as the length of each removal, the total amount of time the child is removed, and the proximity of removals to one another. Educational services shall not be terminated during a period of expulsion and during a suspension after a student is suspended for more than a total of ten (10) days during a school year.

(2) 11th Day Removal Determination of change in placement -- Before the child is removed for the 11th day in any school year, the building principal and the DoSE, or designee, determine if the removal constitutes a change in educational placement. They must be in

agreement that the removal is not an educational change in placement. If they do not so agree, the removal is treated as a change in educational placement.

(3) If the 11th day removal does not constitute a change of educational placement the following must be provided:

(A) Functional Behavioral Assessment and Behavior Intervention Plan--If a functional behavioral assessment has not previously been conducted and a behavior intervention plan implemented for the child, an IEP meeting must be convened within ten (10) business days after first removing the child to develop a functional behavioral assessment plan. This requirement applies to the first removal that exceeds ten (10) days in any school year.

If a functional behavioral assessment has already been conducted and the child already has a behavioral intervention plan, the ARC must meet to review the plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. This requirement applies to the first removal that exceeds ten (10) days in any school year.

As soon as practicable after developing the assessment plan, and completing the assessment required by the plan, the ARC must meet to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

(B) Continuation of Educational Services-- Educational services must be provided to the extent necessary to enable the child to appropriately progress in the general education curriculum and appropriately advance toward achieving the goals set out in the child's IEP during any removals that exceed ten (10) school days in any school year irrespective of whether the behavior is determined to be a manifestation of the child's disability.

For the 11th day removal period, the building principal and the DoSE, or designee, in consultation with the child's special education teacher, must determine the extent to which

services are necessary to meet the legal standard stated immediately above. An IEP can be changed only in an IEP meeting. Services must be based on the current IEP.

(4) For subsequent removals (after the 11th day removal period) during the same school year that do not constitute a change in educational placement:

Before each of these subsequent removals in any school year, the building principal and the DoSE, or designee, determine if the removal constitutes a change in educational placement. They must be in agreement that the removal is not an educational change of placement. If they do not so agree, the removal is treated as a change in educational placement.

For any subsequent removals (after the 11th day removal period) during that school year that do not constitute a change in educational placement, the ARC team members must review the behavior intervention plan and its implementation to determine if modifications are necessary. This review can be conducted outside an ARC meeting unless one (1) or more of the ARC team members, after reviewing the behavioral intervention plan and its implementation, believe that modifications to the plan or to its implementation are necessary.

For these subsequent removal periods, the building principal and the DoSE, or designee, in consultation with the child's special education teacher, determine the extent to which services are necessary to meet the legal standard stated above. An IEP can be changed only in an IEP meeting. Services must be based on the current IEP.

(5) Disciplinary Change of Placement -- For removals that constitute a change of placement under 34 CFR 300.519 or IDEA , including interim alternative educational setting placements by the ARC for weapons or drugs under 34 CFR 300.520 (a)(2) or by a hearing officer or judge for substantial likelihood of injury/dangerousness under 34 CFR 300.521 or 300.526 the following must be provided:

(A) Continuation of Educational Services -- Educational services must be provided to the extent necessary to enable the child to appropriately progress in the general education curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

The extent of services necessary to meet the legal standard stated immediately above is determined by the ARC for removals that constitute a change of placement under 34 CFR 300.519, including interim weapon or drug removals by the ARC.

The extent of services necessary to meet the legal standard stated above is proposed by the building principal and the DoSE, or designee, who have consulted with the child's special education teacher, and must be approved by a hearing officer or appropriate judge for substantial likelihood of injury/dangerousness removals under 34 CFR 300.521 or 300.526 or IDEA.

(B) Functional Behavioral Assessment -- The child must receive, as appropriate, a functional behavioral assessment, provided the MCSD had not previously conducted such assessment, or the ARC must review and modify, as necessary, any behavioral intervention services and modifications already in place designed to address the behavior violation so that it does not recur.

(C) Manifestation Determination Review Pursuant to Section 13 herein.

(6) Interim Alternative Educational Setting Placement by ARC -- Before imposing, or applying to a hearing officer or judge for, an interim alternative educational setting placement the ARC shall attempt to obtain parental agreement to the proposed change of placement.

(A) An ARC may order a change in placement of a child with a disability to an appropriate interim alternative educational setting (IAES) for the same amount of time that a child without a disability would be subject to discipline, but for not more than forty-five (45) days if:

(1) The child carries or possesses a weapon (as defined in federal law for IAES placements) to or at: school; a school function; or school premises under the jurisdiction of an SEA or the MCSD; or

(2) The child 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 an SEA or the MCSD. An illegal drug shall not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under the authority of any other provision of the Controlled Substances Act, 21 USC section 812(c) or under any other provision of federal law.

(7) Disciplinary Change of Placement Order by a Hearing Officer— The parent of a child with a disability who disagrees with any decision regarding interim alternative educational setting placement, or the manifestation determination, or a MCSD 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.

(A) Change of Placement Order-- In making the determination under subsection (7), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may-- (1) return a child with a disability to the placement from which the child was removed; or

(2) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others, and, if the hearing officer :

(a) Determines that the MCSD has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the MCSD has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines the interim alternative educational setting that is proposed by the building principal, and DoSE, or designee, who have consulted with the child's special education teacher, meets the legal requirements in 707 KAR 1:340(10)(7).

(B) When a disciplinary change of placement order has been requested by either the parent or the MCSD-- (1) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided, whichever occurs first, unless the parent and the State or MCSD agree otherwise; and

(2) the State or local educational agency shall arrange for an expedited hearing.

(8) Interim Alternative Educational Setting Placement Criteria -- An interim alternative educational setting in which a child is placed by an ARC for weapon or drug offenses, or which is recommended to a hearing officer or judge for substantial likelihood of injury/dangerousness removal under 34 CFR 300.521 or 300.526 or IDEA shall:

(A) Enable the child to continue to progress in the general education curriculum;

(B) Enable the child to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and

(C) Include services and modifications to address the behavior to prevent the behavior from recurring.

(9) Application to Judge for Injunctive Relief -- The Superintendent, or designee, may seek injunctive relief through appropriate courts under IDEA; 34 CFR 300.521; 34 CFR 300.526; or KRS 158.150 if the parent and the other members of the ARC cannot agree upon a placement and the current placement will likely result in injury to the student or others.

(A) Functional Behavioral Assessment and Behavior Intervention Plan-- No later than ten (10) business days after commencing an action that results in a change of placement, including interim alternative educational setting placements, the MCSD shall convene the child's ARC to:

Develop a plan for conducting a functional behavioral assessment, if an assessment has not been conducted;

Review and modify an existing behavior intervention plan and its implementation, as necessary, to address the behavior if a functional behavioral assessment has been conducted and a behavioral intervention plan has been developed.

As soon as practicable after developing the functional behavioral assessment and completing the assessments required by the plan, the MCSD shall convene the child's ARC to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.

Section 13. Manifestation Determination Review

The manifestation determination review may be conducted in the meeting in which the functional behavioral assessment is planned or a behavior intervention plan is reviewed as long as applicable legal timelines are met.

(A) If an action is contemplated that will result in a change of placement, including an interim alternative educational setting placement by the ARC under IDEA; 34 CFR 300.520 (a)(2) or by a hearing officer or judge under 34 CFR 300.521 or 300.526, for a child with a disability who has engaged in behavior that violated any rule or code of conduct of the MCSD that applies to all children:

(1) Not later than the date on which the decision to take the removal action is made, the parents shall be notified of the decision and provided with a copy of Procedural Safeguards (Parents' Rights); and

(2) Within ten (10) school days after the date on which the decision to take that action is made, a review by the ARC and other qualified personnel shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action. The ARC shall 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 a direct result of the MCSD's failure to implement the IEP.

(B) Requirements if Behavior is a Manifestation of Child's Disability-- If the ARC determines that either subsection (A) (2) (a) or (b) of this Manifestation Determination Review section is applicable, the conduct shall be determined to be a manifestation of the child's disability and the child shall not be subject to further suspension or expulsion for the incident that was the subject of the manifestation determination, but shall be returned to the placement from which the child was removed, unless the parent and the MCSD agree to a change of placement as part of the modification of the child's behavioral intervention plan. However, an

interim alternative educational setting placement for weapons/drugs/substantial likelihood of injury/dangerousness may be imposed even if the misbehavior is a manifestation of the child's disability.

(1) In conducting the review, the ARC may determine that the behavior of the child was not a manifestation of the child's disability if:

(a) The ARC first considers, in terms of the behavior subject to the disciplinary action, all relevant information including evaluation and diagnostic results, relevant information supplied by the parents, any teacher observations of the child and the child's IEP and placement.

(b) After the review of this information, the child's IEP and placement are reviewed in relationship to the behavior subject to the disciplinary action to determine if the IEP and placement were appropriate and the specially designed instruction and related services, supplementary aids and services and the behavior intervention strategies were provided consistent with the child's IEP and placement; and

(c) The ARC determines if the child's disability impaired the ability of the child to understand the impact and consequences of the behavior and if the child's disability impaired the ability of the child to control the behavior.

(C) If the ARC identifies any deficiencies in the child's IEP or placement or in its implementation, the MCSD shall take immediate steps to remedy those deficiencies.

(D) If Behavior is Not a Manifestation of the Child's Disability--If after the manifestation determination review, the ARC determines the behavior was not a manifestation of the child's disability, relevant disciplinary procedures applicable to all children may be applied to the child in the same manner in which they would be applied to children without disabilities, except that

FAPE must be provided, although it may be provided in an interim alternative educational setting..

(1) If the ARC determines the behavior is not related to the disability of the child, the summary recorder documents the ARC's decision on the district form including:

(a) The decision of the ARC;

(b) A description of any evaluation procedure, test, record, or report the ARC used to reach its decision; and

(c) Any other factors relevant to the ARC's decision.

(E) If the Superintendent did not serve as the MCSD Representative, within 2 days of the ARC's determination that the behavior is not related to the disability of the child, the MCSD Representative informs the Superintendent of the ARC's decision. If this determination is made, the Superintendent may recommend expulsion to the MCSD Board according to MCSD's regular policies and procedures for expulsion.

(F) Continuation of Educational Services--Educational services must continue to be provided during any period of expulsion to the extent necessary to enable the child to appropriately progress in the general education curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The ARC must meet to determine the extent of services that meet the legal requirement stated immediately above.

(G) Transmission of Records to Disciplinarian(s)-- If the MCSD initiates disciplinary procedures applicable to all children, the building principal, or designee, shall ensure that all special education and disciplinary records are transmitted to the school personnel/authorities making the final determination regarding the disciplinary actions as to the child with disabilities.

(H) Right of parent to challenge disciplinary change of placement-- A parent may request a due process hearing to contest the decision reached in a manifestation determination review or any decision regarding placement under this section. The hearing shall be arranged in an expedited manner.

(I) Expiration of Interim Alternative Educational Setting Placement-- If a child is placed in an interim alternative educational setting (IAES) and school personnel propose to change the child's placement after expiration of the time period, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (i.e., the child's placement prior to the interim alternative educational setting) unless school personnel maintain that it is dangerous for the child to be in the current placement, in which case the Superintendent, or designee, may request an expedited due process hearing to extend the IAES placement for up to 45 days. A new expedited hearing to extend the IAES may be requested before the end of each 45 -day period. Otherwise, upon the expiration of the interim placement period, the child returns to the placement current prior to the first IAES placement for the particular misbehavior. The Superintendent, or designee, may also apply to an appropriate court for injunctive relief under KRS 158.150.

Section 14. Protections for Children not yet Eligible for Special Education Services: A

child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a rule or code of conduct of the MCSD, may assert any of the protections provided for students already eligible for special education services if the MCSD had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Before initiating expulsion proceedings, or excluding any student from school for a period of time that would constitute a pattern of removal if the student had been determined eligible to receive special education services, the building principal, or designee, takes the following action. The assigned person(s) shall review the student's records and discuss the student with his/her current teacher(s) and counselor(s) to determine if the district has a basis of knowledge that the student may be in need of special education services, as described immediately below. The building principal, or designee, shall be prepared to demonstrate that this has been accomplished.

(1) Basis of Knowledge -- The MCSD shall be deemed to have knowledge that a child may be a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

- (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 (the MCSD), or to a teacher of the child, that the child is in need of special education and related services;
- (b) The parent of the child has requested an evaluation for special education services;
- (c) The behavior or performance of the child demonstrates the need for these services, in accordance with 707 KAR 1:280;

The teacher of the child, or other personnel of the MCSD, has expressed specific concerns about a pattern of behavior demonstrated by the child, i.e., the behavior or performance of the child, directly to the director of special education or to other supervisory personnel of the MCSD.

The MCSD shall not be deemed to have knowledge that a child may be a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused

special education services or the MCSD conducted an evaluation and determined the child was not a child with a disability.

If the MCSD 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 applied to children without disabilities who engaged in comparable behaviors.

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 unless educational services are required under some other provision of law.

Section 15. Reporting to Law Enforcement Agencies

Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.

If the MCSD reports a crime committed by a child with a disability, the building principal, or designee, 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 USC Section 1232g.

Section 16. State Complaint Procedures.

(1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 CFR 300.660 through 300.662:

(a) A time limit of sixty (60) days after a complaint is filed to carry out an independent

investigation, if necessary;

(b) An opportunity by the complainant and the LEA to submit additional information about any allegation in the complaint;

(c) A review of all relevant information; and

(d) A written decision addressing each allegation in the complaint 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 regulations;

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

(c) Information indicating that the violation did not occur more than one (1) year prior to the date of the filing of the complaint, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three (3) years prior to the date of the complaint.

KDE Complaints

Refer to the KDE Special Education Procedures Manual for other provisions regulating the complaint process.

Operational Plans-- The formal complaint letter is stamped in with the date it is received by the Kentucky Department of Education (KDE), Division of Exceptional Children Services (DECS). The sixty (60) calendar day timeline will be determined from the date the DECS received the complaint. In the event of exceptional circumstances, the DECS Director may arrange for an extension to the 60-day timeline for the resolution of the complaint.

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, KDE must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved utilizing KDE complaint procedures. If an issue is raised in a complaint that had previously been decided in a due process hearing and involves the same parties, the hearing decision is binding and KDE will inform the parties to that effect. A complaint alleging failure to implement a due process decision must be resolved by KDE.

(1) Upon receipt of the written complaint, DECS will send a letter to the district's superintendent outlining the complaint timelines and response required by the district. Copies of the formal complaint and KDE letters will be sent to the Regional Exceptional Children Consultant (RECC), the complainant, the local Director of Special Education (DoSE), and the child's parent(s).

According to 34 CFR 300.660 (a)(ii), the district may resolve the complaint without formal investigation by KDE. If the district conducts its own investigation, KDE will maintain the right to review the district's decision on the complaint. Within five (5) business days of receipt of the complaint notification, the district should notify KDE if it intends to conduct its own investigation. The investigation could include parent and/or district staff interviews, review of records, or other investigatory activities that will lead to resolution of the issues. The district should allow the complainant the opportunity to submit additional information, either orally or in writing, about the allegations. After the district has completed its investigation, a written decision, which addresses all the issues, should be sent to the complainant and forwarded to KDE.

The lead consultant assigned will review all of the submitted documentation and pursuant to federal regulation (34 CFR 300.661), either accept it as a final resolution of the allegations or determine that further investigation is needed.

If the district determines that it cannot investigate the complaint, KDE staff shall conduct an immediate investigation. The lead consultant will inform the complainant of the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The district should submit documentation to substantiate or refute the allegations. The consultant will review the response and documentation submitted by the district and the complainant. Additional documentation/information may be requested. The consultant will, at a minimum, conduct telephone interviews with district personnel and the complainant, or parent, as part of the investigatory process.

*The consultant will review all the evidence and prepare a written report that will address each allegation in the complaint; findings of fact and conclusions; the reasons for the final decision(s); and if necessary, suggestions for technical assistance, negotiations or a corrective action plan (CAP). Input from other KDE staff will be secured as needed. In resolving a complaint in which failure to provide appropriate services has been found, KDE must address at least two (2) items. They include: (1) how to remediate the denial of those services, including, as appropriate, the awarding or monetary reimbursement or other corrective action appropriate to the need of the student; and (2) appropriate future provision of services for all children with disabilities [34 CFR 300.660 (b) (1) (2)]. The report, under the signature of the DECS director, will be sent to the Superintendent, the Director of Special Education, the RECC, the complainant, and the parents, as applicable. **If the complainant is not authorized to represent the student/parent, a copy of the report will not be sent to the complainant.***

Additional Operational Plans (KDE Complaints)

A complaint, which is substantially modified or amended by the complainant subsequent to its acknowledgment, shall be deemed a new complaint for the purpose of computing the permissible timelines. (During the complaint investigation, if additional substantial violations, beyond the original complaint issues are identified, the district will be notified.)

*A statement must accompany complaints submitted by an advocate regarding a specific child from the parent/guardian authorizing the advocate to act in their behalf if the advocate is to receive a copy of the report of findings. Attorney's fees will **not** be awarded for either party using the complaint procedures.*

(4) The complainant, parent or the MCSD 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. The Superintendent shall decide whether to file an appeal on behalf of the MCSD.

The lead consultant will monitor the timeline for the CAP. In the event there are exceptional circumstances, the lead consultant, in conjunction with the branch manager, may arrange for an extension of the CAP timeline. Upon successful completion of the CAP, a letter, under the signature of the DECS director, will be sent to the Superintendent, the Director of Special Education, the RECC, the complainant, and the parents closing the CAP.

(5) The Kentucky Department of Education shall allow an extension of the time limit under Section (1)(a) only if exceptional circumstances exist.

Placement Decisions.

Section 1. Placement Decisions. (1) The MCSD shall ensure that to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled. All services and educational placements are individually determined based on the child's unique abilities and needs. The MCSD 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) The MCSD 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 MCSD shall make provision for supplementary services to be provided in conjunction with regular class placement if/as determined needed by the ARC for each individual child with a disability.

(5) In determining the educational placement of a child with a disability, the MCSD 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 non-disabled.

(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 education curriculum.

(10) In providing or arranging for the provision of nonacademic and extracurricular services and activities, the MCSD shall ensure that a child with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of the child.

(11) The MCSD ARC Chairperson obtains written parental consent for initial services at the initial placement meeting.

(12) If the parent does not attend the ARC meeting, the MCSD Representative (Special Education Teacher) sends notice of proposed or refused action to the parent with a request for written consent for initial services, if appropriate.

(13) An ARC considers/determines all changes of placement/services based on the above procedures and on placement in the least restrictive environment. Changes in placement may include, among others, the following:

- a) Initiation of, or changes in, specially designed instruction and related services;
- b) Changes in specially designed instructional setting (e.g., regular class to resource

class; resource to special class, shortened school day);

c) Return to full-time regular education services due to concluding specially designed instruction and related services;

d) Disciplinary removals as described in 707 KAR 1: 340 and in Procedural Safeguards procedures;

e) Receipt of a regular high school diploma;

f) Aging out of eligibility.

(14) For a child whose eligibility terminates under (13) (e) or (f) immediately above, the MCSD shall provide the child with a summary of his/her academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting his/her postsecondary goals

(15) The ARC determines any variation of the length of the school day for a student with a disability by reviewing the IEP and other relevant data as required by the Kentucky Department of Education and makes decisions based on that review. The MCSD Representative must inform the DoSE if an ARC determines that the condition of any child with a disability warrants less than a full day of attendance. The ARC and the DoSE follow Kentucky Department of Education regulations and procedures and all local Board of Education policies and procedures concerning a shortened school day.

Section 2. Class Size. (1) The MCSD shall provide special education according to case load for special classes (as determined by the Kentucky Department of Education Instructions for the December Child Count Forms) for each child with a disability as follows:

(a) Emotional-behavior disability is eight (8);

(b) Functional mental disability is ten (10);

- (c) Hearing impairment is six (6);
- (d) Mild mental disability for primary is fifteen (15) and for secondary 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) The MCSD shall provide special education according to class size (per period, block or the specified length of time set by the individual school) for resource classes for each child with a disability as follows:

- (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, the MCSD shall submit a waiver request to the Kentucky Department of Education. The waiver request will be prepared by the DoSE on the form provided by the Kentucky Department of Education. The Superintendent shall submit the request according to the instructions from the Kentucky Department of Education.

Section 3. Case Load for Resource Teachers. Caseload for resource teachers refers to maximum number of student records for whom/ (which) a teacher can be assigned. The MCSD 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);
- and
- (9) Visual impairment is ten (10).

Confidentiality

Refer to General Board of Education Policy 09.14 and FERPA for other provisions regarding confidentiality of records for all students.

Section 1. Access Rights. (1) The MCSD shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the MCSD. The DoSE or designee shall comply with a request without unnecessary delay and before any ARC 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 MCSD to reasonable requests for explanations and interpretations of the records;

The building principal, or designee, in conjunction with the DoSE, shall take steps to obtain translation, or other means, to provide explanations and interpretations to parents in an effective mode of communication in a timely manner.

(b) The right to request that the MCSD 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) The MCSD may presume that a natural or adoptive parent has authority to inspect and review records relating to his child unless the MCSD has been advised under a court order that the parent does not have the authority.

Section 2. Record of Access. Each building principal, or designee, 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 MCSD), 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 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.

The MCSD provides information from records containing data on more than one child in such a way as to preserve the confidentiality of the other students. If a parent requests to review and inspect educational records that have information about more than one child (e.g., attendance rosters, child tracking systems, grade books, etc.), then the person responsible for the maintenance of those records makes a copy of the records requested. Before providing the parent access to the copy, the person responsible for the record removes any personally identifiable information regarding other children. The MCSD does not maintain personally identifiable information about any child in the educational record of another child.

Section 4. Types and Location of Information. The building principal, or designee, 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 MCSD.

Section 5. Fees. (1) The MCSD 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. Fees are determined by the MCSD Board

of Education. See Board Policy _09.14.

(2) The MCSD 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 MCSD to amend the information.

The MCSD shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(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. (Also, refer to Board Policy 09.14 as well as FERPA and it's implementing regulations.)

Section 7. Consent. (1) Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 12, signed and dated written 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) The MCSD 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. Section 1232g. For the Confidentiality section of these procedures, participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B

of the Act (IDEA).

In compliance with Board Policy _09.14 and FERPA, the MCSD obtains written consent from a parent or eligible student (age 18), before disclosing personally identifiable information to an entity or individual not authorized to receive it under FERPA. The written consent must:

1. Specify the records that may be disclosed;
2. State the purpose of the disclosure; and
3. Identify the party or class of parties to whom the disclosure may be made.

If a parent or eligible student so requests, the MCSD shall provide him/her with a copy of the records disclosed. If a parent so requests, the MCSD shall provide a student who is not an eligible student with a copy of the records disclosed.

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

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

(2) The MCSD shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information. The Director of Pupil Personnel is responsible for developing and implementing methods to safeguard personally identifiable student information for the MCSD.

(3) A MCSD employee collecting or using personally identifiable information shall receive training or instruction regarding 707 KAR 1:360. The DoSE or designee is responsible for assuring that this training is provided.

(4) The MCSD 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, i.e., Disclosure Without Consent list. This list may include a person or company with whom the MCSD has contracted to perform a special task.

Board Policy_09.14 provides that the MCSD shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under FERPA and its implementing regulations.

Section 9. Destruction of Information. The MCSD shall inform the parent when personally identifiable student information is 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, subject to the following: The DoSE, or designee, destroys records only in accordance with the law and as specified in the Kentucky Records Retention Schedule.

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

However, a permanent record of a child's name, address, and phone number, his grades, attendance records, 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 age eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

Children with Disabilities Enrolled in Private Schools.

Section 1. Children with disabilities enrolled in private schools by their parents when

FAPE is at issue. (1) The MCSD 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 MCSD shall not be required to pay for the cost of the private education. Disagreements between a parent and the MCSD regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR Chapter 1.

(2) If a parent of a child with a disability, who previously received special education and related services under the authority of the MCSD, enrolls the child in a private school without the consent of or referral by the MCSD, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the MCSD 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 MCSD for the private placement and the MCSD 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 the MCSD.

(3) The cost of the financial reimbursement described in subsection (2) of this section may be reduced or denied in one of the following situations:

(a) If at the most recent ARC meeting prior to the removal by the parents of their child with a disability from the public school, the parents did not inform the MCSD that they were rejecting the proposed MCSD placement, including stating their concerns and their intent to enroll the child in a private school at public expense; or

(b) If at least ten (10) business days (including any holidays that occur on a business day)

prior to the removal of the child from the public school, the parents did not give written notice to the MCSD of the information described in (a) of this subsection;

(c) If, prior to the parent's removal of the child, the MCSD 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) Upon a judicial finding of unreasonableness with respect to the actions taken by the parents.

(4) The cost of financial reimbursement shall not be reduced or denied for the failure to provide the notice described above if:

(a) The parent is illiterate and cannot write in English;

(b) Compliance with this 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 MCSD of his obligation to provide this notice.

The MCSD provides notice of the parents' responsibilities to give notice to the MCSD prior to removal of the child from the MCSD to private school through its Parents Procedural Safeguards (Parents Rights) document provided to parents in accordance with the Procedural Safeguards section of these procedures.

Section 2. Children with Disabilities Enrolled by their Parents in Private School. The MCSD shall locate, identify, and evaluate all private school children with disabilities, including religious school children, migrant and homeless children, home school children, foster children,

or children in the custody of public welfare agencies residing within the boundaries of the MCSD, and children attending private schools located within the MCSD boundaries. (When the MCSD locates a student who is suspected of needing special education and related services in a private school within its boundaries who does not reside there, the DoSE shall contact the DoSE of the resident district to determine if the child is eligible for special education services or shall refer the child for consideration for special education services). These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. The DoSE shall consult with appropriate representatives of the private schools on how to carry out these activities.

Section 3. Service plans. (1) The DoSE shall consult with representatives of private schools in deciding how to conduct the annual count of the number of private school children with disabilities. This child count shall be used to determine the amount that the MCSD shall spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

(2) The amount to be spent shall be an amount that is the same proportion of the MCSD's total subgrant as the number of private school children with disabilities aged three (3) to twenty-one (21) attending private schools located within the boundaries of the MCSD to the total number of children with disabilities aged three (3) to twenty-one (21) residing within the boundaries of the MCSD. This same formula shall be applied to children aged three (3) through five (5).

(3) Expenditures for child find activities shall not be considered in determining the amount the MCSD is required to spend under this section.

(4) A private school child with a disability shall not have an individual right to receive

some or all of the special education and related services that the child would receive if enrolled in a public school.

(5) Prior to the beginning of each school year, the DoSE shall consult, in a timely and meaningful way, with private school representatives and with appropriate representatives of parents of private school children with disabilities regarding the following:

- (a) The funding available under this administrative regulation;
 - (b) The number of private school children with disabilities; and
 - (c) The needs of those children and their location.
- (6) The consultation shall result in decisions as to:
- (a) Which children will receive services under a services plan;
 - (b) What services will be provided;
 - (c) How and where the services will be provided; and
 - (d) How the services provided will be evaluated.

(7) The consultation with private school representatives and the appropriate representatives of parents of private school children with disabilities shall give the representatives a genuine opportunity to express their views regarding each matter listed in subsections (5) and (6) of this section. The consultation shall take place prior to any decision made by the MCSD about the service plans. The final decision shall be the responsibility of the MCSD.

(8) The MCSD shall maintain in its records and provide to the State educational agency the number of private school children evaluated, the number of private school children determined to be children with disabilities and the number of private school children served.

(9) Equitable Participation -- The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an

accurate count of such children.

(10) Consultation-- To ensure timely and meaningful consultation, the MCSD, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding-- (a) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(b) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities, including the determination of how the amount was calculated;

(c) the consultation process among the MCSD, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school 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 for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(e) how, if the MCSD disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the

MCSD shall provide to the private school officials a written explanation of the reasons why the MCSD chose not to provide services directly or through a contract.

(f) Written Affirmation- When timely and meaningful consultation has occurred, the MCSD shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the MCSD shall forward the documentation of the consultation process to the State educational agency.

(11) Compliance-- (a) A private school official shall have the right to submit a complaint to the State educational agency that the MCSD did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(b) Procedure-- If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance by the MCSD to the State educational agency, and the MCSD shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance by the MCSD to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

(12) Provision of Equitable Services-- The provision of services pursuant to this section shall be provided-- (a) by employees of a public agency; or

(b) through contract by the public agency with an individual, association, agency, organization, or other entity.

(13) Secular, Neutral, Nonideological-- Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

(14) If a private school child with a disability is to receive special education and related services through a services plan, the MCSD shall:

(a) Initiate and conduct ARC meetings to develop, review, and revise a services plan; and

(b) Ensure that a representative of the private school attends each ARC meeting. If the representative cannot attend, the DoSE shall use other methods to ensure participation by the private school including individual or conference telephone calls.

Section 4. Services provided. (1) The MCSD shall ensure that services provided under a services plan will be provided by personnel meeting the same standards as personnel providing services in the public school.

(2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools as documented by the ARC on the district Service Plan form.

(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 MCSD will provide in light of the services the MCSD has determined to provide private school children with disabilities through the process in 707 KAR 1:370, Section 3.

(4) The services plan shall, to the extent appropriate:

(a) Meet the requirements of an IEP under 707 KAR Chapter 1 with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with the requirements to develop,

review, and revise IEP's.

The services plan shall be implemented for each child with a disability designated to receive services.

Section 5. Location of Services. (1) A service to a private school child with a disability may be provided at a site determined by the MCSD and not otherwise prohibited by law. 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
- (b) From the service site to the private school, or to the child's home, depending on the timing of the services.

(2) The MCSD 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 6. Due Process Procedures. The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340 Sections 4, 5, and 6 shall not apply to complaints that the MCSD 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 13. The due process procedures described in 707 KAR 1:340 shall apply to complaints that the MCSD 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.

Section 7. Restrictions on Serving Non-Public Students. (1) The MCSD 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 MCSD 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) The MCSD 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) The MCSD 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 MCSD.

(4) `Public Control of Funds-- The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property, although equipment and supplies may be placed in a private school for the period of time needed to provide the services.

(5) The MCSD 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 MCSD 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.

(7) The MCSD shall not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities.

The DoSE shall monitor the use of Part B funds used to provide services to private school students to provide for legal compliance in the use of such funds.