Fayette County Public Schools
Special Education Procedures

KSBA Model

2008

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KSBA MODEL
July 28, 2008

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Chapter I -- Definitions. (707 KAR 1:002)

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) "**Ages Out**" means a youth with a disability reaches his or her twenty first birthday (refer to General Board of Education Policy 09.122 Attendance Requirements)

(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. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(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 exceptional children and youth assigned to a teacher of exceptional children and youth for the purpose of overseeing the management of individualized specially designed instruction and related services as required by the individualized education program.

(9) "**Case manager"** means the teacher assigned and responsible for monitoring services provided and maintaining the special education record of the student with a disability. The number of records a teacher may be assigned as case manager is equal to the number of students that may be assigned to the teacher's caseload.

(10) **"Change of placement because of disciplinary removals"** means a change of placement occurs if:

(a) The removal is for more than ten (10) consecutive school days; or

(b) The child has been subjected to a series of removals that constitute a pattern (which is determined on a case-by-case basis) because:

(i) The series of removals total more than ten (10) school days in a school year;

(ii) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Of additional factors including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one (1) another.

(11) "**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.

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

(13) "**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.

(14) "**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.

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

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

(17) "**Confidentiality"** means the protection of all personally identifiable data, information, and records collected, used or maintained by FCPS.

(18) **"Consent**" means:

(a) A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication
(b) A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom;
(c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
(d) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that occurred after the consent was given and before the consent was revoked).

(19) **"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)).

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

(21) **"Corrective action plan (CAP)"** means a written improvement plan describing activities and timelines, with persons responsible for implementation, developed to correct identified areas of non-compliance, including directives from KDE, specifying actions to be taken to fulfill a legal obligation.

(22) "**Course of study**" means a multiyear description of coursework from the student's current school year to the anticipated exit year designed to achieve the student's desired postschool goals.

(23) **"Day**" means calendar day unless otherwise indicated as business day or school day.

(24) **"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.

(25) **"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;
(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.

(26) "**District Representative"** means the superintendent shall submit a list of designated representative(s) of the district by job title, to the board of education for approval that are qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, are knowledgeable about the general curriculum and the availability of resources of the LEA; and not a teacher of the student.

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

(28) "**Emancipated Youth**" means:

(a) a youth who has reached the age of majority, eighteen (18), and no evidence exists that there is a court order or a legal document showing the parent as the guardian or youth's representative in educational matters;
(b) a youth who is married or has been married; or
(c) a youth who has been incarcerated as an adult.

(29) **"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.

(30) **"Enforcement"** means the Kentucky Department of Education takes steps to ensure federal and state special education requirements are implemented.

(31) **"Extended school year services (ESY)"** 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.

(32) **"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 Fayette County Public Schools 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.

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

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

(a) May be mild to profound, unilateral or bilateral, permanent or fluctuating
(b) Results in difficulty identifying linguistic information through hearing; and
(c) Has an adverse effect on the child's educational performance.

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

(36) "**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).

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

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

(39) "**Implementer**" means each regular education teacher, special education teacher, related service provider, and other service providers who are responsible for providing the services listed on the Individual Education Program.

(40) **"Independent education evaluation"** means an evaluation conducted by a qualified

examiner who is not employed by the FCPS responsible for the education of the child in question.

(41) **"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.

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

(43) "**Least Restrictive Environment**" (LRE) means the educational setting in which the student with a disability can learn effectively, based upon unique needs and capabilities, and participates with non-disabled students to the maximum extent possible.

(44) **"Local educational agency (LEA)"** means the Fayette County Public Schools (FCPS), 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.

(45) **"Mental disability"** means that a child has one (1) of the following:

(a) A mild mental disability (MMD) in which:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;
2. Adaptive behavior deficit is at least two (2) standard deviations below the mean;
3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
4. Manifestation is typically during the developmental period; or

(b) A functional mental disability (FMD) in which:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean;
2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean;
3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
4. Manifestation is typically during the developmental period.

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

(47) **"Multiple disabilities (MD)"** means concomitant impairments that have an adverse effect on the child's educational performance, the combination of which causes severe

educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. Examples of MD include mental disability-blindness, and mental disability-orthopedic impairment. Multiple disabilities does not mean deaf-blindness, nor does it mean a speech or language impairment in combination with another category of disability.

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

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

(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or

(c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual, such as sign language, Braille, or oral communication.

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

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

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

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

(50) **"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, such as acquired immune deficiency syndrome, asthma, attention deficit disorder, attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, tuberculosis or Tourette Syndrome; and

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

(51) **"Parent"** means:

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

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

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

(e) A foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or
(f) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 6 and the Individuals with Disabilities Education Act.

Except when directed otherwise by a court order, the biological or adoptive parent, when attempting to act as the parent must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons listed under (a) through (d) to act as the ''parent'' of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the ''parent'' for purposes of this section. See the Representation of Children section of the Procedural Safeguards and State Complaint Procedures Chapter for direction on surrogate parents appointed by a judge.

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

(53) **"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.

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

(55) **"Private school children with disabilities"** means children with disabilities enrolled by their parents in private schools that meet the definition of elementary or secondary school in the IDEA regulations at 34 CFR 300.13 and 34 CFR 300.36 and not children with disabilities enrolled in private schools upon referral by the FCPS.

(56) "**Progress data**" means a record of a student's progress toward attainment of the annual goal(s).

(57) "**Progress report**" means a statement to the parent of a student with a disability informing the parent of the child's progress toward the annual goals; and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the IEP year.

(58) **"Public expense"** means that the FCPS 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 the administrative regulations relieves 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.

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

(60) **"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.

(61) **"Related services"** means

(a) 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.

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

(c) Exception: Services that apply to children with surgically implanted devices, including cochlear implants. (1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping), maintenance of that device, or the replacement of that device.

(d) The definition of "related services" does not:

i. Limit the responsibility of the FCPS to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school;

ii. Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly; or

iii. Limit the right of a child with a surgically-implanted device to receive related services that are determined by the ARC to be necessary for the child to receive FAPE.

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

(63) **"School day"** means any day, including a partial day, that children attend school for instructional purposes. School day means the same thing for all children in school, including children with or without disabilities.

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

(65) **"Services plan"** means a written statement that describes the special education or related services that the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary that is developed in accordance with 707 KAR 1:370.

(66) "Special classes" means specially equipped and staffed classes in which an exceptional child or youth, individually or in small groups, spends part of his or her day receiving specially designed instruction or related services as determined by the ARC.

(67) **“Special education”** means specially designed instruction to meet the unique needs of an exceptional child or youth.

(68) “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.

(69) "Special educational facilities" means physical facilities designed or adapted to meet the needs of exceptional children and youth, and approved according to administrative regulations promulgated by the Kentucky Board of Education.

(70) “Specially-designed instruction (SDI)” 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.

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

(72) "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.

(73) **“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 a disability to be educated with non-disabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

(74) “Transition Services” means a coordinated set of activities for a child with a disability that:
(a) Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (b) Is based on the individual student’s needs, considering the child’s strengths, 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.

(75) **“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.

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

(77) **"Visual impairment" (VI)** means a vision loss, even with correction that:
has an adverse effect on the child's educational performance.

(78) **"Ward of the state"** means a child who has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice through a legal process, whether the commitment is voluntary or non-voluntary and the biological or adoptive parental rights have been terminated.
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(79) **"Weapon"** means dangerous weapon as defined in 18 U.S.C. 930 (g) (2).

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

Chapter II -- Free Appropriate Public Education. (707 KAR 1:290)

Section 1. Free Appropriate Public Education.

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

(2) The FCPS 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.

(3) The FCPS shall obtain written informed parental consent to access public benefits or insurance. The consent form shall comply with FERPA.

(4) The FCPS shall notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the FCPS of its responsibility to ensure that all required services are provided at no cost to the parents.

(5) The FCPS 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 FCPS 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.

(6) 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.

(7) 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 and External Components of Surgically Implanted Medical Devices.

(1) The FCPS shall ensure the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
(2) External components of surgically implanted medical devices. The FCPS shall ensure the external components of surgically implanted medical devices of children with disabilities are functioning properly. For a child with a surgically implanted medical device who is receiving special education and related services under this part, the FCPS is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

Section 4. Program Options.

The FCPS shall ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Fayette County Public Schools Program of Studies, 704 KAR 3:303, that is available to children without disabilities, including art, music, industrial arts, consumer and family science education, career and technical education and other educational services. 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 FCPS shall take steps, including the provision of supplementary aids and services as determined appropriate and necessary by the child's ARC, to provide all children with disabilities the nonacademic and extracurricular services and activities, that give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include:

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

Section 6. Physical Education.

(1) Unless the provisions of subsection (2) of this section apply, the FCPS shall make available to every child with a disability:

(a) Physical education services, specially designed if prescribed in the child's IEP; or

(b) The opportunity to participate in the regular physical education program available to children without disabilities.

(2) The FCPS is not required to make available physical education services to a child with a disability if:

(a) The child is enrolled full time in a separate facility in which case the agency responsible for the education of the child in that facility shall ensure the child receives appropriate physical education; or

(b) The FCPS enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

Section 7. Assistive Technology.

(1) The FCPS shall ensure that Assistive technology devices or Assistive technology services, or both, as defined in 707 KAR 1:280 (3) or (4) are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services.

(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 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.

(1) The FCPS 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 FCPS shall not:

(a) Limit the provision of extended year services to a particular category(s) of disability; or

(b) Unilaterally limit the type, amount, or duration of those services.

(2) Extended School Year Criteria

(a) The FCPS provides an extended school year to a child with a disability, regardless of the nature or severity of the disability, if the ARC determines the services are required in order for the child to receive a Free Appropriate Public Education. An extended school year program is provided when the recoupment time for a child with a disability significantly exceeds that of similar age peers who are not disabled and who experience the same lapse in instruction.

(b) An extended year school program extends beyond the regular school year for the purpose of maintaining the child's current skill level which, without continued instruction, would be lost or would require a longer than reasonable time or more than six weeks to regain those skills. ESY services are not designed to teach new skills, prevent normal amounts of regression, or allow the child to make additional progress, but simply to maintain the present level of educational performance and thus prevent excessive recoupment time.

(3) Verification of Regression and Excessive Recoupment Time

(a) At least annually the ARC determines the need for an extended school year by:

1. Using progress data regarding the goals taught in the IEP to access the amount of regression and the amount of time of recoupment. This may be done by:
   (a) taking measurements at the end of instruction;
   (b) measure performance after a lapse of instruction; or
   (c) measure at regular intervals until the performance is equal to the performance when the lapse in instruction time began.

2. When ther have been no breaks in instruction or there is uncertain data that can be analyzed to obtain valid assessment of recoupment time,
   (a) tests and observation data collected over a period of time; and
   (b) the opinion of professionals based on a professional individual assessment of student regression and recoupment skills.

(4) ARC Analysis of Criteria

(a) The services and the amount of time required for ESY may vary for each student as determined by the appropriate ARC. In addition, the type and amount of service is specific to the (IEP) area(s) of service required to prevent excessive recoupment time, and not necessarily the full range or amount of service that was contained in the IEP reviewed as the basis for determining regression/recoupment.

(b) The district representative, in consultation with the DoSE, makes arrangements for the child to receive extended school year services according to the specifications of the ARC decision.

Section 9. Prohibition of Mandatory Medication.

FCPS personnel shall not require a child to obtain a prescription for a substance covered by schedules I, II, III, IV, or V in section 202(c) of the Controlled Substance Act (21 U.S.C. 812(c)), as a condition of attendance in school, receiving an evaluation under 707 KAR 1:300, or receiving services under 707 KAR Chapter 1. However, school personnel may consult or share classroom-based observations with parents or guardians regarding their child's academic, functional, or behavioral performance or regarding the need for evaluation to determine eligibility for special education services.

Section 10. Transfer Students.

(1) Transfer Within the Same State -- If a child with a disability transfers into the FCPS within the same school/academic year, and had an IEP in effect in Fayette County Public Schools, the FCPS shall provide such child with a free appropriate public education, including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the FCPS adopts the previous IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

(2) Transfer Outside State-- If a child with a disability transfers into the FCPS within the same school/academic year, and had an IEP in effect in another State, the FCPS shall provide such child with a free appropriate public education, including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the FCPS conducts an evaluation, if determined to be necessary by the FCPS, and develops, adopts and implements a new IEP, if the child meets Kentucky eligibility criteria.

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

(a) Records Regarding Migratory Children with Disabilities. The FCPS shall cooperate with the efforts of the United States Department of Education under the No Child Left Behind Act to transfer health and education records on migratory children with disabilities who move to other states.

(b) The receiving LEA shall take reasonable steps to promptly obtain the child's records, including the IEP, supporting documents, and any other records, including discipline records, relating to the provision of special education and related services to the child, from the previous LEA, consistent with FERPA, i.e., pursuant to 34 CFR 99.31(a)(2): and 300;324; and

(c) the previous LEA shall take reasonable steps to promptly respond to such request from the receiving LEA.

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

Section 11 - Part C Transition.

(a) The FCPS shall ensure that by the third birthday of a child transitioning from a Part C program, an IEP has been developed and is being implemented for the child consistent with subsection (b) of this section.

(b) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP will begin.

Chapter III. Child Find, Evaluation, and Reevaluation. (707 KAR 1:300)

Section 1. Child Find Requirements.

The FCPS 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 FCPS's geographical boundaries, FCPS, including children who are highly mobile, migrant children, homeless children as described in 704 KAR 7:090 and the IDEA, foster children, or children who are wards of the state or are in state custody, students who are advancing grade to grade resulting from passing a grade but who still may have a disability; and children with disabilities attending private schools (which includes home schools), located within the FCPS boundaries;

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

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

(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 FCPS must ensure a smooth and effective transition from the early intervention program to preschool.

(6) The FCPS 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) The FCPS 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 FCPS 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 FCPS geographical boundaries.

(8) Specifically, the FCPS does the following (Includes Public Notice):

> (a) 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 FCPS to the extent feasible. Annually the Dose requests information about families residing in the FCPS boundaries who are non-English speaking from the Director of Pupil Personnel.
> (b) This notice may be combined with the FERPA public notice. The notice

includes:

1) A description of the children on whom the FCPS will maintain personally identifiable information;
2) The types of information the FCPS wants to obtain;
3) The methods the FCPS intends to use in gathering the information, including the sources from whom/which information is gathered;
4) How the FCPS will use the information it gathers;
5) A summary of the FCPS's policies and procedures for storage, disclosure to third parties, retention and destruction of personally identifiable information; and
6) 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.

(c) Annually, FCPS 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

(d) Annually, 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:

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

(e) Annually, 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.

(f) 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 FCPS staff.

Section 2. Referral System.

(1) The FCPS 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.

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

(3) The FCPS shall ensure that:

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

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

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

(5) Each FCPS 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.

(6) Upon receipt of a completed referral, the appropriate FCPS 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.

(7) 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 FCPS 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 FCPS Representative obtains written parental consent and arranges for the evaluation to be completed.

(d) If parental consent is not given, the FCPS Representative contacts the DoSE and follows procedures defined in the Procedural Safeguards and State Complaint Procedures Chapter.

Section 3. Evaluation and Reevaluation Procedures.

(1) The FCPS 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 most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so

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

(3) 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 and shall not need parent consent.

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

(5) A variety of assessment tools and strategies shall be used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, 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 Fayette County Public Schools Program of Studies, 704 KAR 3:303, or for a preschool child, to participate in appropriate activities.

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

(a) Have been validated for the specific purpose for which it is used;

(b) Be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test; and

(c) Be conducted under standard conditions, unless a description of the extent to which it varied from standard conditions is documented in the evaluation report.

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

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

(9) A single 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.

(10) The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities as identified by the ARC on the district form.

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

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

(13) Assessment tools and strategies shall be used that provide relevant information that directly assists, and is used, in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, 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 classroom-based observations; and
(c) Observations by teachers and related services providers.

(14) On the basis of the review, and input from the parents, the ARC shall identify what additional data, if any, are needed to determine:

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

(15) Assessments and evaluation of children with disabilities who transfer from one public agency to another public agency in the same school/academic year shall be coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with the exception to the 60 school day timeline set out in the Individual Education Program Chapter, Section 2, ARC Meetings, to ensure prompt completion of full evaluations.

(16) The FCPS 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 no additional data is needed to determine whether the child continues to be eligible for services or to determine the child's educational needs, the designated FCPS 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 a reevaluation/reassessment to determine whether, for purposes of services, the child continues to be a child with a disability or to determine the child's educational or related service needs.

(17) The FCPS is not required to conduct a reevaluation/reassessment if after review of the existing data, the ARC determines:

(a) No reevaluation/reassessment is necessary to determine whether the child continues to be eligible for services; and

(b) A reevaluation/reassessment is not warranted to determine the child's educational or related service needs, including improved academic achievement and functional performance; and

(c) The parents or teacher do not request a reevaluation/reassessment. The appropriate FCPS Representative obtains written parental consent before conducting any reassessment even if a parent requested the reassessment.

(18) The FCPS shall ensure a reevaluation, which may consist of the review described in subsection (14) of 707 KAR 1:300, is conducted at least every three (3) years, unless the parent and the FCPS agree that a reevaluation is unnecessary, FCPS 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.

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

(20) The FCPS shall evaluate a child with a disability in accordance with 707 KAR 1:300 and this procedure before determining that the child is no longer a child with a disability. The FCPS shall not be required to conduct an evaluation as described in this section before the termination of a child's eligibility due to graduation from secondary school

with a regular diploma or due to exceeding the age eligibility for a free, appropriate public education.

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

(22) For students who graduate or age out of the program, the FCPS shall provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals.

Chapter IV -- Determination of Eligibility. (707 KAR 1:310)

Section 1. Determination of Eligibility.

(1) Upon analysis of intervention and assessment data, the ARC shall determine whether the child is a child with a disability as defined in 707 KAR 1:280(1)(9) to the extent that specially designed instruction is required in order for the child to benefit from education. The FCPS shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

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

(a) A lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the ESEA, 20 U.S.C. 6301);
(b) A lack of appropriate instruction in math; or
(c) Limited English proficiency; and

(3) If the child does not otherwise meet eligibility criteria.

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

(a) Response to scientific, research-based interventions;
(b) Vision, hearing, and communication screenings;
(c) Parental input;
(d) Aptitude and achievement tests;
(e) Teacher recommendations;
(f) Physical condition;
(g) Social or cultural background;
(h) Adaptive behavior; or
(i) Behavioral observations.

(5) The ARC shall ensure that information obtained from these sources, as appropriate for each student, 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.

(8) In determining eligibility for a Speech or Language Impairment (S/L), the ARC shall use the guidelines in the Kentucky Eligibility Guidelines for Students with Speech or Language Impairments (KEG-R).

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 considered by the child's ARC. The ARC shall also include other professionals, relative to the area(s) of concern, such as a school psychologist, speech-language pathologist, or educational specialist.

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

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

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

(a) The child is provided with learning experiences and instruction appropriate for the child's age or state-approved grade level standards aligned with the Fayette County Public Schools Program of Studies, 704 KAR 3:303; and
(b) The child does not achieve adequately for the child's age or grade level standards aligned with the Fayette County Public Schools Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the areas listed in this section; and

(4) The ARC may determine a child has a specific learning disability under either the Discrepancy Model Option or the Response To Intervention Model (RTI):

Discrepancy Model Option:

(1) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development, that is determined by the ARC to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 707 KAR 1:300, Section 4: and

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

a. Oral expression;
b. Listening comprehension;
c. Written expression;

d. Basic reading skills;
e. Reading fluency skills
f. Reading comprehension;
g. Mathematics calculation; or
h. Mathematics reasoning.

RTI Model Option:

The child fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Fayette County Public Schools Program of Studies, 704 KAR 3:303 in one or more of the areas listed in this section when assessed based on the child's response to scientific, research-based intervention and instruction. RTI documentation must be consistent with procedures outlined in (7) through (10).

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

(a) A visual, hearing, or motor impairment;
(b) Mental disability as defined in 707 KAR 1:280;
(c) Emotional-behavioral disability;
(d) Cultural factors;
(e) Environmental or economic disadvantage; or
(f) Limited English proficiency.

(6) At least one (1) team member other than the child's regular education teacher shall observe the child in the learning environment, including the regular classroom setting, to document academic performance and behavior in the area of difficulty. If the child is less than school age or is out of school, the observation shall take place in an environment appropriate for the child.

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

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

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

(9) An ARC shall develop documentation of a specific learning disability. This documentation shall contain a statement of:

(a) Whether the child has a specific learning disability;

(b) The basis for making that determination;
(c) The relevant behavior noted during the observation;
(d) The relationship of that behavior to the child's academic functioning;
(e) The educationally relevant medical findings, if any;
(f) Whether the child does not achieve commensurate with the child's age and ability;
(g) Whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas listed in this subsection, that require special education and related services; and
(h) The determination of the ARC concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; environmental, cultural factors; economic disadvantage; or limited English proficiency on the child's achievement level; and
(i) The instructional strategies used and the student-centered data collected based on the child's response to scientific, research-based intervention.

(10) This documentation shall include notification to the child's parents concerning the policies regarding:
(a) The amount and nature of student performance data that is collected and the general education services that are provided;
(b) Strategies for increasing the child's rate of learning; an
(c) The parents' right to request an evaluation.

(11) Each ARC member shall certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusions, the team member shall submit a separate statement presenting the member's conclusions, using a district form (Conference Summary Minutes Page).

Chapter V -- Individual Education Program. (707 KAR 1:320)

Section 1. Individual Education Programs.

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

(2) Kentucky School for the Deaf (KSD) and Kentucky School for the Blind (KSB), in conjunction with the FCPS, shall ensure that an IEP is developed, documented, and implemented for each child with a disability placed in these schools by an ARC. The FCPS 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 FCPS 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 FCPS's DoSE.

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

(4) The FCPS 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 FCPS (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 FCPS shall ensure that:

(a) The child's IEP is accessible to each regular education teacher, special education teacher, related service 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 FCPS 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) An ARC shall not have to be convened in order to make minor, nonprogrammatic, changes to an IEP, such as typographical errors, incorrect directory information about the student (such as, birth date, age, grade, address, or school), and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the FCPS makes any minor, nonprogrammatic changes, all members of the ARC shall be given a copy of the changes and an explanation as to why the changes were made within ten (10) school days of the changes being made. If any member of the ARC objects to the changes, an ARC meeting shall be convened within a reasonable period of time to discuss the changes.

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

(a) The child is evaluated; and

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

(4) Exception to Timelines-The sixty (60) school-day timeline shall not apply in the following situations:

(a) If the child moves to the FCPS after consent for the initial evaluation is given but before the evaluation can be completed, as long as the FCPS is making sufficient progress to complete the evaluation and the parent and the FCPS agree to a specific time when the evaluation shall be completed; or

(b) If the parent repeatedly fails or refuses to produce the child for evaluation.

(5) Within this sixty (60) school-day period, the FCPS 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.

(6) The appropriate FCPS Representative 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, if appropriate;
3. The results of any reevaluation;
4. Information about the child provided by, or to, the parents;
5. The child's anticipated needs; or
6. Other matters.

Section 3. ARC Membership.

(1) The appropriate FCPS Representative 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 FCPS Representative 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 FCPS 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 FCPS. The Superintendent, in consultation with the DoSE, will recommend to the Board for approval a list of FCPS Representatives by job or position title. The Superintendent, or designee, may designate which specific staff member on that approved list will serve as the FCPS 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 FCPS;

(g) Related services personnel, as appropriate; and

(h) The child, whenever appropriate.

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

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

(a) The parent and the FCPS consent in writing to the excusal; and

(b) The member submits, in writing, to the parent and the ARC team, input into the development of the IEP prior to the meeting.

(4) If the purpose of the ARC is to discuss transition services for a child with a disability as described in Section 4(3) and (4) of 707 KAR 1:320, the child shall be invited to the ARC. If the child does not attend the ARC meeting, the FCPS shall take other steps to ensure the child's preferences and interests are considered. A public agency that is likely to be responsible for providing or paying for transition services shall also be invited, to the extent appropriate and with the consent of the parent or the child, if the child is an emancipated adult. If the representative of the other public agency does not attend, the FCPS shall take other steps to obtain participation of the other agency in the planning of any transition services.

(5) If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include the personnel listed in 707 KAR 1:310, Section 2(1), in addition to the personnel listed in subsection (1) of this section.

(6) If the purpose of the ARC meeting is to discuss transition from the early intervention program into the preschool program, the FCPS shall invite a representative of the early intervention program to the initial transition ARC if the parent requests it. At the ARC meeting, the child's previous Individualized Family Service Plan that was used by the early intervention program shall be considered when developing the new IEP for the child.

Section 4. Parent Participation.

(1) The FCPS 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. The meeting shall be scheduled at a mutually agreed on time and place.

(2) The appropriate FCPS 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;
(e) Notice that the parents may invite people with knowledge or special expertise of the child to the meeting; and
(f) Notice that the FCPS will invite representatives from the early intervention program to the initial meeting if the parent requests it.

(3) Except for meetings concerning a disciplinary change in placement or a safety issue, the FCPS shall provide written notice to the parents of a child with a disability at least seven (7) days before an ARC meeting the appropriate FCPS representative shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before an ARC meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

(4) If the child is in the eighth grade year, or has reached the age of fourteen (14) years, the invitation shall state that a purpose of the meeting will be the development of a statement for the need for transition services for the child and state that the child is invited. This subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.

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

(6) The appropriate FCPS Representative 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.

(7) An ARC meeting may be conducted without a parent in attendance if the FCPS is unable to convince the parent that he should attend. The FCPS 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.

(8) When using an interpreter or other action, as appropriate, the appropriate FCPS Representative shall take whatever action is necessary to ensure the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(9) The FCPS Representative 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 mail a copy with the notice of proposed or refused action three (3) 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;
(c) As appropriate, the results of the child's performance on any general state or district-wide assessment programs; and
(d) The academic, developmental, and functional needs of the child.

(2) An ARC shall:

(a) In the case of a child whose behavior impedes his or her learning or that of others, consider, 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 need 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 academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum as provided in the Fayette County Public Schools Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in

appropriate activities; and

(b) A statement of measurable annual goals, including academic and functional goals, designed to:

i. Meet 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 Fayette County Public Schools Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities, and

ii. Meet the child's other educational needs that result from the disability.

(8) The FCPS shall use benchmarks or short-term objectives for a child's IEP if that child is participating in alternate assessment.

(9) 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 and without disabilities.

(10) 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.

(11) 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 districtwide 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 accountability programs.

(12) If the ARC determines 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.

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

(14) An IEP shall include a statement of:

(a) How the child's progress toward meeting the annual goals will be measured; and

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

(15). The IEP shall also include the requirements for transition services for eligible students as detailed in Section 7 of 707 KAR 1:320.

Section 6. Transition Services.

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

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

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

(b) The transition services (including the course of study) needed to assist the child in reaching these goals. This statement shall be updated annually.

(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 FCPS, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the FCPS (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 FCPS.

(1) Prior to FCPS placing a child with a disability in, or referring a child to, a private school or facility, the FCPS shall initiate and conduct an ARC meeting to develop an IEP for the child.

(2) The appropriate FCPS Representative shall ensure a representative of the private school or facility attends the meeting. If the representative cannot attend, the appropriate FCPS Representative 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 FCPS.

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

(5) If the FCPS places a child with a disability in, or refers a child with a disability to, a private school, it 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 1:340, and at no cost to the parents;

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

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

Section 8. IEP Accountability.

(1) The FCPS shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child in achieving the goals, objectives, or benchmarks listed in the IEP.

(2) The FCPS shall be responsible for including children with disabilities in the state-wide assessment as provided in 703 KAR 5:070.

(3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel good faith efforts are not being made.

Chaper VI -- Safeguards and State Complaint Procedures (707 KAR 1:340)

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) Parent participation in meetings- The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) The FCPS must provide notice consistent with these procedures to ensure parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(i) of this section.

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

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

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

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

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

(a) Teaching methodology;

(b) Lesson plans;

(c) Coordination of service provision, or

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

Section 2. Independent Educational Evaluation.

(1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

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

(3) If a parent requests an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the FCPS, the FCPS shall, without

unnecessary delay:

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

(4) The FCPS may ask for the parent's reasons why he objects to FCPS its evaluation; however, the parent shall not be required to respond and the FCPS shall not delay its action under subsection three (3) of this section while waiting for a response from a parent; and

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

(6) A parent is entitled to only one (1) independent educational evaluation at public expense each time the FCPS conducts an evaluation with which the parent disagrees.

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

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

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

Section 3. Notice to Parents.

(1) The appropriate FCPS Representative shall provide written notice, which may be by email if the parent and the FCPS agree (parent agreement shall be documented by the appropriate FCPS representative, or designee) to the parents of a child with a disability.

(2) Except for meetings concerning a disciplinary change in placement or a safety issue, the FCPS representative shall provide written notice to the parents of a child with a disability at least seven (7) days before an ARC meeting in which the FCPS:

(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.

(3) The appropriate FCPS representative shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before an ARC meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

(4) This notice shall include:

(a) A description of the action proposed or refused by the FCPS;
(b) An explanation of why the FCPS proposes or refuses to take the action;
(c) A description of any other options that the FCPS considered and the reasons why those options were rejected;
(d) A description of each evaluation procedure, test, assessment, record, or report the FCPS used as a basis for the proposed or refused action;
(e) A description of any other factors that are relevant to the FCPS'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 FCPS 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.

(5) The FCPS Representative shall give notice of proposed or refused action to the parents. If the parent attended the meeting, copies of these documents may be given at the conclusion of meeting or may be provided to the parent within two (2) school days following the meeting. Changes decided by the ARC will not be implemented until the parent receives the written document unless the parent verbally consents during a meeting or a documented discussion to changes being implemented prior to receipt of the meeting documentation. The proposed action may be implemented immediately if parents received notice in the meeting and within seven (7) 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.

(6) 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 FCPS shall take steps to ensure:

(a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
(b) that the parent understands the content of the notice: and
(c) that there is written evidence that the requirements of (a) and (b) in this subsection have been met . The native language of the parent of a child is the definition of native language used in 707 KAR1:280.

(7) The appropriate FCPS Representative, after consulting with the DoSE, obtains the necessary translation or interpretation, if feasible. The FCPS Representative keeps copies

of all correspondence involved in securing the necessary interpretation or translation in his/her administrative files.

Section 4. Procedural Safeguards Notice.

(1) A copy of the Procedural Safeguards Notice including parent's rights provided by the FCPS's DoSE must be given to the parents of a child with a disability one (1) time a school year. A copy also must be given to the parents—

(a) Upon initial referral or parent request for evaluation or reevaluation;
(b) Upon receipt of the first State written complaint under §§ 300.151 through 300.153 in a school year;
(c) Upon receipt of the first filing of a due process hearing request under § 300.507 in a school year;
(d) In accordance with the discipline procedures in 34 CFR § 300.530(h), i.e., in accordance with the notice requirements when a decision is made to remove a student which constitutes a change in placement because of a violation of the code of student conduct; and
(e) Upon request by a parent.

(2) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1; 34 CFR 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 a manner easily understandable to the general public.

(3) Alternative Means of Meeting Participation -- When conducting ARC meetings and placement meetings, 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 FCPS may agree to use alternative means of meeting participation, such as video conferences and conference calls. (Parent agreement shall be documented by the appropriate FCPS representative, or designee).

Section 5. Parental Consent.

(1) The appropriate FCPS Representative shall obtain informed, written parental consent before conducting an initial evaluation or reevaluation 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. The FCPS must make reasonable efforts to obtain these consents. To show the reasonable efforts made, the FCPS shall keep documentation, which may include:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;
(b) Copies of correspondence sent to the parents and any responses received; and
(c) Detailed records of the visits made to the parent's home or place of employment and the results of those visits. The appropriate FCPS Representative 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 FCPS Representative maintains documentation of these attempts in the child's special education records.

(2) 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 FCPS 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.

(3) If the parent of a child with a disability refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the FCPS may pursue the initial evaluation by using the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing. However, the FCPS shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation. 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/danger by a student to himself or others. Determinations as to filing for mediation on behalf of the district shall be made by the Superintendent, or designee.

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

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

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

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

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

(7) The FCPS shall obtain consent before conducting a reevaluation of a child with a disability. If the parent refuses to consent, the FCPS may pursue the reevaluation by using the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing.

(8) Parental consent for reevaluation shall not be required if the FCPS can demonstrate that:

(a) It made reasonable efforts to obtain such consent and followed the procedures in subsection 5 of this section to document those efforts; and

(b) The parent failed to respond.

(9) Parental consent shall not be required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

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

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

(a) Fails to respond or refuses to consent to a request for evaluation;

(d) Fails to respond or refuses to consent to a request for services; or

(e) Refuses to consent to a reevaluation

(11) The appropriate FCPS Representative shall document the parent refusal or failure to respond.

(12) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent -

(a) the FCPS may not use the consent override procedures of the law in an attempt to force the evaluation, and

(b) The FCPS is not required to consider the child as eligible for services under 34 CFR. §§ 300.132 through 300.144.

Section 6. Representation of Children.

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

(a) Despite reasonable efforts, the FCPS cannot discover the whereabouts of the parents;

(b) The rights of the parents have been terminated in accordance with state law; or

(c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

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

(3) The FCPS shall ensure the rights of a child are protected by determining a legally appropriate educational representative for the child. The FCPS shall appoint a surrogate parent to make educational decisions for the child if:

(a) No parent as defined in 707 KAR 1:280 can be identified;

(b) The FCPS, after reasonable efforts, cannot discover the whereabouts of the parents;

(c) The child is a ward of the state as defined in 707 KAR 1:280; or

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431.

(4) The FCPS shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, such as:

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

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

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

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

(6) The FCPS shall have a procedure for selecting surrogates. A surrogate:

(a) Shall not be an employee of Fayette County Public Schools, the FCPS, or any other agency that is involved in the education or care of the child;

(b) Shall not have any personal or professional interest that conflicts with the interests of the child; and

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

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

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The appropriate FCPS Representative reviews appropriate records and may contact appropriate state agencies to assist with the determination of the need for a surrogate parent.

(10) The FCPS Representative 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.

(11) As soon as possible after the referral is completed, the FCPS 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 biological or adoptive parent, legal guardian, person acting as a parent, or surrogate parent.

(12) If the FCPS Representative determines the child is to be represented by a legal guardian, or is emancipated by court order or marriage, the FCPS Representative contacts the DPP, or designee, 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.

(13) 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.

(14) 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.

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

(16) 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 biological 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.

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

(18) The FCPS shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the FCPS that the child needs a surrogate.
(19) 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.

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

Section 7. State Complaint Procedures.

See Appendix for the Kentucky Department of Education (KDE) regulation. Refer to the KDE Special Education Procedures Manual (State Plan) for other provisions regulating the complaint process.

Section 8. Right to Mediation and Due Process Hearings.

(1) The FCPS and parent of a child with a disability shall have the right to request mediation from Fayette County Public Schools to resolve any disputes that may arise under 707 KAR Chapter 1.

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

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

(4) The appropriate FCPS Representative 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 FCPS initiates a hearing. The DoSE shall provide the FCPS Representative with a list of these legal or other relevant services.

Section 9. Mediation Rights.

(1). The FCPS must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. See Appendix for the KDE regulation.

Section 10. Dispute Resolution Meetings.

See Appendix for the Fayette County Public Schools regulation.

Section 11. Hearing Rights.

See Appendix for the KDE regulation.

Section 12. Appeal of Decision (includes Stay Put).

See Appendix for the KDE regulation.

Section 13. Discipline Procedures.

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

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

(3) School personnel may remove a student with a disability from the student's current placement for additional periods of time of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement because of disciplinary removals.

(4) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in subsection (5) (a) and (b) below shall be provided during any subsequent days of removal.

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

> (a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur.

(6) The services described in subsection (5) of this section may be provided in an interim alternative educational setting.

(7) The FCPS shall provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.

(8) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (5) of this section are needed.

(9) 11th Day and Subsequent Removal Periods Determination of Change of Placement -- Before the child is removed for the 11th day in any school year and before any subsequent removals during the same 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

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

Section 14. Manifestation Determination and Interim Alternative Educational Setting (IAES).

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

(a) If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

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

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

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

(a) (i) Conduct/provide for a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or
(ii) Review the behavioral intervention plan, (if one has already been developed) and modify it, as necessary, to address the behavior; and

(b) Return the child to the placement from which the child was removed unless the FCPS and the parent agree to a change of placement as part of modification of the behavioral intervention plan or because of the special circumstances (interim alternative educational setting) explained in subsection (5) of 707 KAR 1:340.

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

(a) Carries a weapon to, or possesses a weapon at, school, on school premises, or to, or at, a school function under the jurisdiction of KDE or the FCPS;
(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the KDE or the FCPS; or
(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of KDE or the FCPS.

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

(7) If the Superintendent did not serve as the FCPS Representative, within five (5) calendar days of the ARC's determination that the behavior is not related to the disability

of the child, the FCPS Representative informs the Superintendent of the ARC's decision. If this determination is made, the Superintendent may recommend expulsion to the FCPS Board of Education according to the FCPS's regular policies and procedures for expulsion.

(8) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the FCPS shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards including parent's rights in accordance with Section 4 of 707 KAR 1:340.

(9) The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 13(4), 13(10) and 14(5) of 707 KAR 1:340.

Section 15. Appeals from Placement Decisions and Expedited Due Process Hearings.

(1) The parent of a child with a disability who disagrees with any decision regarding placement under Section 13 or 14 of 707 KAR 1:340 or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing by filing using the procedures contained in Sections 8 and 11 of 707 KAR 1:340.

(2) 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

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

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

(a) Return the child to the placement from which the child was removed; or

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

(5) When an appeal under this section has been requested, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time provided for in subsection 15 (3)(b) of 707 KAR 1:340, whichever occurs first, unless the parent and the FCPS agree otherwise.

(6) An appeal under this section shall:

(a) Be conducted in an expedited manner;

(b) Shall occur within twenty (20) school days from the date the request is filed; and
(c) Shall result in a determination within ten (10) school days after the hearing.

(7) The Superintendent, or designee, may apply to an appropriate court for injunctive relief under KRS 158.150 or federal IDEA provisions 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.

Section 16. Protections for Children not Determined Eligible for Special Education Services:

(1) 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 code of student conduct FCPS may assert any of the protections provided for students already eligible for special education services if the FCPS had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(2) **Basis of Knowledge** -- The FCPS shall be deemed to have knowledge that a child is 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 (FCPS), 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; or
(c) The teacher of the child, or other personnel of the FCPS, has expressed concern about a pattern of behavior or performance demonstrated by the child directly to the FCPS director of special education or to other supervisory personnel of the FCPS.

(3) The FCPS shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that the child may have a disability, the FCPS:

(a) Conducted an evaluation and determined the child was not a child with a disability;
(b) Determined an evaluation was not necessary and provided notice to the parents of these determinations; or
(c) The parents refused to consent to an evaluation or refused initial services.

(4) Conditions that apply if the FCPS does not have a Basis of Knowledge –

(a) If the FCPS 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.

(b) 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.
(c) 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.
(d) If the child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the FCPS and information provided by the parents, the FCPS must provide special education and related services,

Section 17. Reporting to Law Enforcement Agencies.

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

(2) If the FCPS 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.

Chapter VII -- Placement Decisions. (707 KAR 1:350)

Section 1. Placement Decisions.

(1) The FCPS shall ensure that to the maximum extent appropriate, children with disabilities, including children placed by the FCPS in public or private institutions or other care facilities, 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 FCPS 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 FCPS 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 FCPS 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 FCPS 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 FCPS 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 appropriate FCPS Representative obtains written parental consent for initial services.

(12) If the parent does not attend the ARC meeting, the appropriate FCPS Representative 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 defined in 707 KAR 1: 280;
(e) Receipt of a regular high school diploma;
(f) Aging out of eligibility.

(14) For a child whose eligibility terminates under subsection 13) (e) or (f) immediately above, the FCPS 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 Fayette County Public Schools and makes decisions based on that review. The FCPS Representative must inform the DoSE if an ARC determines the condition of any child with a disability warrants less than a full day of attendance. The ARC and the DoSE follow Fayette County Public Schools regulations and procedures and all local Board of Education policies and procedures concerning a shortened school day.

Section 2. Class Size and Caseloads

(1) The maximum class size for special classes for students with the following conditions shall be limited to:

Eight (8) students with autism;
Ten (10) students with a developmental delay;
Eight (8) students with an emotional-behavioral disability;
Ten (10) students with a functional mental disability;
Six (6) students with a hearing impairment;
Fifteen (15) students with a mild mental disability;
Ten (10) students with multiple disabilities;
Sixteen (16) students with an orthopedic impairment;
Sixteen (16) students with an other health impairment;
Ten (10) students in kindergarten to grade five (5) and fifteen (15) students in grades six (6) to twelve (12) with a specific learning disability; and
Ten (10) students with a visual disability.

(2) The maximum caseloads for teachers of special classes shall be:

Fifteen (15) students with autism;
Fifteen (15) students with a developmental delay;
Fifteen (15) students with an emotional-behavioral disability;
Ten (10) students with a functional mental disability;
Eight (8) students with a hearing impairment;
Fifteen (15) students in kindergarten to grade five (5) and twenty (20) students in grades six (6) to twelve (12) with a mild mental disability;
Ten (10) students with multiple disabilities;
Twenty (20) students with an orthopedic impairment;
Twenty (20) students with an other health impairment;
Fifteen (15) students in kindergarten to grade five (5) and twenty (20) students in grades six (6) to twelve (12) with a specific learning disability; and
Ten (10) students with a visual disability;

(3) For speech-language pathologists the caseload limitations in KRS 334A.190 shall apply.

(4) Special classes containing more than one (1) disability category shall use the category of the majority of students in the class to determine the maximum class size.

(5) Two (2) students above the maximum class size for special classes set out above may be added to a class if a paraprofessional is present.

(6) If a teacher of exceptional children and youth provides services through the collaborative model, the maximum caseload shall not exceed twenty (20) students in grades six (6) to twelve (12) and fifteen (15) students in kindergarten to grade five (5)

(7)If a teacher of exceptional children provides services through a combination of collaboration and special classes, the maximum caseloads shall not exceed those set out above for caseloads.

(8)Teachers of special classes who are assigned student records of more than one (1) disability category shall use the category of the majority of students on the caseload to determine the maximum caseload; and

(9) 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.

(10) Pursuant to KRS 157.360, if caseload for special classes or class size for special classes exceeds the maximum specified in this section for thirty (30) days, the FCPS shall submit a waiver request to KDE. The waiver request will be prepared by the DoSE on the form provided by KDE. The Superintendent shall submit the request according to the instructions from KDE.

Chapter VIII – Confidentiality (707 KAR 1:360)

Refer to General Board of Education Policy and Administrative Procedure 09.14 Student Records for other provisions regarding confidentiality of records for all students.

Section 1. **Access Rights.**

(1) The FCPS shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the FCPS. The DPP and/or DOSE shall comply with a request without unnecessary delay and before any meeting regarding an IEP, including ARC meetings, mediations, due process hearings, and dispute resolution meetings, 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 FCPS to reasonable requests for explanations and interpretations of the records;
(i) The building principal, or designee, 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 FCPS 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 FCPS may presume that a biological or adoptive parent has authority to inspect and review records relating to his child unless the FCPS 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 FCPS), 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**.

(1) 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.

(2) The FCPS 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 FCPS 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 FCPS.

Section 5. **Fees.**

(1) The FCPS 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 FCPS Board of Education. See Board Policy and Administrative Procedure 10.11 Access to Records.

(2) The FCPS 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 FCPS to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the FCPS shall respond within ten (10) school days.

(2) If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1: 140 shall apply. (Also, refer to Board Policy and Administrative Procedure 09.14 Student Records for FCPS policy(s)/procedure(s) governing such requests.)

Section 7. Consent.

(1) Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 17, 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 FCPS 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 Chapter 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).

(3) Parental consent, or the consent of an eligible child under FERPA , must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 CFR § 300.321(b)(3).

(4) In compliance with Board Policy and Administrative Procedure 09.14 Student Records, the FCPS obtains written consent from a parent or eligible student under FERPA, before disclosing personally identifiable information to an entity or individual not authorized to receive it under FERPA.

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

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

Section 8. Safeguards.

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

(2) The FCPS shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information. The DPP and/or DoSE is responsible for developing and implementing methods to safeguard personally identifiable student information for the FCPS.

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

(4) The FCPS shall maintain, for public inspection, a current listing of the names and positions of employees within the FCPS who may have access to personally identifiable student information, i.e., Disclosure Without Consent list. This list may include those with whom the FCPS has contracted to perform a special task.

(5) Board Policy and Administrative Procedure 10.11, Access to Public Records, provide the FCPS 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**.

(1) The FCPS shall inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information shall be destroyed at the request of a parent, subject to the following: The DPP, DoSE, or designee, destroys records only in accordance with the law and as specified in the Fayette County Public Schools Records Retention Schedule. Destruction means physical destruction or removal of personal identifiers from information so the information is no longer personally identifiable

(2) 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.

Chapter IX -- Children with Disabilities Enrolled in Private Schools. (KAR 1:370)

Section 1. Children with disabilities enrolled in private schools by their parents when FAPE is at issue.

(1) The FCPS 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 FCPS shall not be required to pay for the cost of the private education. Disagreements between a parent and the FCPS regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR 1 :340.

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

(3) The amount of the financial reimbursement described in subsection (2) of this section may be reduced or denied if:

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

(b) 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 FCPS of the information described in paragraph (a) of this subsection;

(c) Prior to the parent's removal of the child, the FCPS informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(d) There is a judicial finding that the actions taken by the parents were unreasonable.

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

(a) The parent is illiterate;

(b) Compliance with the notice requirement would likely result in physical or serious emotional harm to the child;

(c) The school prevented the parent from providing the notice; or

(d) The parent had not received notice from the FCPS of his obligation to provide

this notice.

(5) The FCPS provides notice of the parents' responsibilities to give notice to the FCPS prior to removal of the child from the FCPS to private school through its Parents Procedural Safeguards (Parent's Rights) document provided to parents in accordance with the Procedural Safeguards and State Complaint Procedures Chapter of these procedures.

Section 2. Child Find for Children with Disabilities Enrolled by Their Parents in Private School.

(1) The FCPS shall locate, identify, and evaluate all private school children with disabilities, including school children attending private**,** religious schools within the boundaries of the FCPS. These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA in which private schools are located shall include parentally-placed private school children who attend those schools but reside in a state other than Fayette County Public Schools in its child find activities.

(2) The FCPS shall maintain in its records and provide to KDE:

(a) The number of children evaluated under this section;

(b) The number of children determined to be children with disabilities under this section; and

(c) The number of children served under this section.

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

(4) Child find design. The child find process must be designed to ensure—

(a) The equitable participation of parentally-placed private school children; and

(b) An accurate count of those children.

(5) Child find activities shall be completed in a time period comparable to that for students attending public school in the FCPS. The FCPS shall not consider the costs, including the cost of individual evaluations, incurred by its child find activities in meeting its obligation under Section 4(3) of 707 KAR 1:370.

(6) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released from officials in the LEA where the private school is located to officials in the LEA of the parent's residence.

Section 3. Parental Consent.

If a parent of a child who is parentally placed in a private school does not provide consent for the initial evaluation or the reevaluation or a parent fails to respond to such a request, the FCPS:

(a) Shall not use the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing;
(b) Shall not be required to consider the child as eligible for services under 707 KAR 1:370; and
(c) Shall document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place of employment visits, and the results of these efforts.

Section 4. Basic Requirements.

(1) The FCPS shall provide special education and related services to parentally placed private school children with disabilities in accordance with the procedure found in Section 5 of 707 KAR 1:370, to the extent consistent with the number and location of these children enrolled in private schools located within the school district boundaries.

(2) A service plan shall be developed and implemented for each private school child with a disability who has been designated by the FCPS to receive special education and related services under Section 5 of 707 KAR 1:370.

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

Section 5. Consultation.

(1) Annually, the DoSE shall consult, in a timely and meaningful fashion, with private school representatives and parents or representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services regarding the following:

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

i. The types of services, including direct services and alternate service delivery methods;
ii. How special education and related services will be apportioned if funds are not sufficient to serve all parentally placed private school students with disabilities; and
iii. How and when those decisions will be made; and

(d) How the FCPS will provide a written explanation to the private school officials of the reasons why it chose not to provide services directly or through a contract, if the FCPS disagrees with the views of the private school representatives.

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

Section 6. Services Provided.

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

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

(3) A private school child with a disability who has been designated to receive services shall have a services plan that describes the specific special education or related services the FCPS will provide in light of the services the FCPS has determined to provide private school children with disabilities through the process in 707 KAR 1:370, Section 5.

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

(a) Meet the requirements of an IEP under 707 KAR 1:320 with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs.

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

(6) Services delivered through a service plan shall be provided by:

(a) Employees of the FCPS; or
(b) Through a contract with the FCPS.

(7) Special education and related services provided through a service plan shall be secular, neutral, and nonideological.

Section 7. Location of Services.

(1) A service to a private school child with a disability may be provided at a site determined by the FCPS 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 FCPS is not required to provide transportation from the child's home to the private school.

(3) The cost of transportation may be included in calculating the amount to be expended on private school children with disabilities.

Section 8. Due Process Procedures.

(1) The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340, Sections 4, 6, 8, 9, 10, 11, 12 shall not apply to complaints that the FCPS failed to meet the requirements of 707 KAR 1:370, including the provision of services indicated on a services plan. However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340, Section 7. The due process procedures described in 707 KAR 1:340 shall apply to complaints that the FCPS failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

(2) A private school official has the right to submit a state written complaint to the FCPS and Fayette County Public Schools as outlined in 707 KAR 1:340, Section 7, for allegations that the FCPS:

(a) Did not engage in timely and meaningful consultation; or
(b) Did not give due consideration to the views of the private school official.

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

(4) If the private school official is dissatisfied with the final decision of Fayette County Public Schools, the official may submit a complaint to the Secretary of the United States

Department of Education. If such a complaint is filed with the secretary, the Fayette County Public Schools shall forward the appropriate documentation to the Secretary.

Section 9. Restrictions on Serving Non-Public Students.

(1) The FCPS 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 FCPS 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 FCPS 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 FCPS 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 FCPS.

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

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

(8) 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.

APPENDIX

Excerpts from 707 KAR 1:340

Procedural safeguards and state complaint procedures.

Section 7. State Complaint Procedures.

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

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

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

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

1. A proposal to resolve the complaint; and

2. An opportunity for the parent who has filed the complaint and the district to voluntarily engage in mediation;

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

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

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

(3) The complaint shall include:

(a) A statement that FCPS or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA administrative regulations;

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

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

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

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

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

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

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

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

(5) The complainant, parent, or FCPS 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.

(6) The Kentucky Department of Education shall allow an extension of the time limit under subsection (1)(a) of this section only if exceptional circumstances exist or if the parent and the district agree to extend the time line to engage in mediation or other alternative means of dispute resolution.

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

(a) Technical assistance activities;

(b) Negotiations; or

(c)Corrective actions.

Section 8. Right to Mediation and Due Process Hearings.

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

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

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

(4) FCPS 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 FCPS initiates a hearing.

Section 9. Mediation Rights.

(1) The mediation process, if chosen, shall:

(a) Be voluntary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Both the parent and a representative of FCPS who has the authority to bind the distict shall sign the agreement. The agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

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

Section 10. Dispute Resolution.

(1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, FCPS shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the district shall determine the relevant ARC members to attend the resolution session. A representative of the district who has decision-making authority on behalf of FCPS shall also attend this meeting. An attorney for FCPS shall not attend the meeting unless an attorney accompanies the parent.

(2) The purpose of this meeting is:

(a) To allow the parents to discuss their due process hearing request;

(b) To discuss the facts that formed the basis of the request; and

(c) To give FCPS an opportunity to resolve the complaint.

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

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

(a) Signed by both the parent and a representative of FCPS who has the authority to bind the district; and

(b) Is enforceable in any state court of competent jurisdiction or a district court of the United States.

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

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

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

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

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

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

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

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

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

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

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

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or

(c) If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the district withdraws from the mediation process.

Section 11. Hearing Rights.

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

(a) The name of the child;

(b) The address of the residence of the child;

(c) The name of the school the child is attending;

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

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

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

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

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

Section 12. Appeal of Decision.

(1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal, within thirty (30) calendar days of the date of the hearing officer's decision.

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

(3) Except as provided in Sections 14 and 15 of this administrative regulation, during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall remain in the child's current educational placement, unless the district and the parent agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child who is

transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case the district shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the district.

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

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