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## **DEFINITIONS - 4090.01-AR**

The Oldham County public schools adopt and incorporate the definitions set forth in 707 KAR 1:280. In addition, the following terms shall have the following meanings:

**“Admissions and Release Committee or ARC”** means a group of individuals described in 707 KAR 1:320 Section 3, that is responsible for developing, reviewing, or revising an Individual Education Program (IEP) for a child with a disability.

**“Adverse affect”** 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.

**“Aging out”** means the age of the youth has reached the mandated service age for a free appropriate public education and the school district is no longer required to provide special education and related services to the youth. This is a change in placement; however, a reevaluation is not required for a child who is exceeding the age eligibility for FAPE.

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

**“Alternative Diploma”** means the diploma of a student with a disability who meets criteria for the alternative assessment system receives upon completion of the program designed by the Admissions and Release Committee. (formerly “Certificate of Attainment”).

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

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

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

**“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.

**“Beyond the control of school”** means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all interventions strategies attempted by the school. KRS 600.020 (3)

**“Braille”** means the system of reading and writing through touch commonly known as Standard English Braille. KRS 158.281(1)

**“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.

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

**“Certificate of Attainment”** means the certificate a student with a disability who formerly met the criteria for the alternate assessment system received upon completion of a program designed by the Admissions and Release Committee (see **Alternative Diploma**).

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

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

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

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

**“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.

**“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.

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

**“Consent”** means:

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

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

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

**“Course of study”** means a multi-year description of coursework from the student’s current school year to the anticipated exit year designed to achieve the student’s desired post-school goals.

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

**“Deaf-Blindness”** means concomitant hearing and visual impairments that have an adverse affect 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 disabilities.

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

**“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 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:

1. scores of two (2) standard deviations or more below the mean in one of the areas listed above as obtained using norm-referenced instruments and procedures;
2. scores of one and one-half standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or
3. 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.

**“Director”** means the Director of Specialized Academic Programming for the Oldham County Schools.

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

**“Emancipated Student”** means a student who has reached the age of 18, declared emancipated by the court or is a married under the age of 18. Students who are emancipated represent themselves in the educational decision-making process, unless they have been declared legally incompetent pursuant to KRS Chapter 387. If a child has been declared legally incompetent, OCS obtains an official copy of the court order appointing a legal guardian. *KRS 159.010*

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

1. severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;
2. severe deficits in academic performance which are not commensurate with the student’s ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child’s social-emotional problem;
3. a general pervasive mood of unhappiness or depression; or
4. a tendency to develop physical symptoms or fears associated with personal or school problems.

This term does not apply to children who display isolated (not necessarily one) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

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

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

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

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

**“Functional”** means activities and skills that are not considered academic or related to a child’s academic achievement as measured on statewide assessments contained in 703 KAR Chapter 5.

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

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

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

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

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

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

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

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

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

**“Interim Alternate Educational Setting”** or “IAES” means any placement setting that is identified as a unilateral disciplinary response to weapons, drugs, violations or any setting approved by a hearing officer or a judge when a situation of substantial injury is at issue.

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

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

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

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

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

1. a mild mental disability (MMD) in which:

- a. cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;
  - b. adaptive behavior deficit is at least two (2) standard deviations below the mean;
  - c. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
  - d. manifestation is typically during the developmental period; or
2. a functional mental disability (FMD) in which:
- a. cognitive functioning is at least three (3) or more standard deviations below the mean;
  - b. adaptive behavior deficits are at least three (3) or more standard deviations below the mean;
  - c. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
  - d. manifestation is typically during the developmental period.

**“Multiple disabilities”** or MD means concomitant impairments that have an adverse affect on the child’s educational performance, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one of the impairments. Examples of MD include mental disability-blindness, and mental disability-orthopedic impairment. Multiple disabilities does not mean deaf-blindness nor does it mean a speech or language impairment in combination with another category of disability. "A pupil is not considered to have a multiple disability if the adverse affect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition." {KRS 157.200 (1)(h)}

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

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

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

**“Orthopedic impairment”** or OI means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes an impairment caused by a congenital anomaly such as clubfoot, absence of some member, etc., an impairment caused by disease such as poliomyelitis, bone tuberculosis, etc., and an impairment from other causes such as cerebral palsy, amputations, and fractures or burns that causes contractures. “Orthopedic impairment means a severe physical impairment of bone or muscle which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes.” {KRS 157.200 (1) (a)}

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

- 1. is due to a chronic or acute health problem such as acquired immune deficiency syndrome, asthma, attention deficit disorder, or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart

- condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, or tuberculosis; and
2. adversely affects a child's educational performance.

**“Parent”** means:

1. a biological or adoptive parent of a child;
2. a guardian generally authorized to act as the child's parent, or authorized to make educational decision for the child, but not the state if the child is a ward of the state;
3. a person acting in the place of a biological or adoptive parent such as a grandparent or stepparent or other relative with whom the child lives, or a person who is legally responsible for the child's welfare;
4. a foster parent if the biological or adoptive parents grant authority, in writing, for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or
5. a surrogate parent who has been appointed in accordance with 707 KAR 1:360, Section 6.

**“Participating agency”** means: (i.) FOR EDUCATIONAL RECORDS: any agency or institution that collects, maintains, or uses personally identifiable information or from which information is obtained, under Part B of the Act. (ii.) FOR TRANSITION SERVICES: a state or local agency that is financially and legally responsible for providing transition services to a child with a disability.

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

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

**“Private school children with disabilities”** means children with disabilities enrolled by their parents in private elementary or secondary schools as defined by IDEA regulations, 34 CFR Part 300.13 and 300.36, and not children with disabilities enrolled in private schools upon referral by a LEA.

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

**“Qualified Personnel”** mean personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state. This includes **mental health professionals** such as Licensed Professional Counselors, social workers, psychologists, etc.

**“Related services”** means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school health services and school nurse services, social work services in school, and parent counseling and training. “Related services” do not

include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device. The definition of "related services" does not:

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

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

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

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

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

**"Scientifically Based Research"** means research that must: (i) employ systematic, empirical methods that draw on observation or experiment; (ii.) involve rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions; (iii.) rely on measurements or observational methods that provide valid data across evaluators and observers, and across multiple measurements and observations; and (iv.) be accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparatively rigorous, objective and scientific review .

**"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.

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

**"Special education"** means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. Special education means speech-language

pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

**“Specially-designed instruction”** means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies, 704 KAR 3:303.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) meets the following:

1. the child has a visual acuity with prescribed lenses that is 20/70 or worse in the better eye; or
2. the child has a visual acuity that is better than 20/70 and the child has one (1) of the following conditions:
  1. a medically diagnosed progressive loss of vision;
  2. a visual field of 20 degrees or worse;
  3. a medically diagnosed condition of cortical blindness; or
  4. a functional vision loss.

**“Visually disabled”** means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils.” {KRS 157.200 (1) (j)}

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

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

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

disability.

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

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

## **FREE APPROPRIATE PUBLIC EDUCATION - 4090.02-AR**

The Oldham County Schools (OCS) makes a free appropriate public education (FAPE) available to all children with disabilities aged three (3) to twenty-one (21) residing within the district's boundaries, whether in a home, facility or shelter, who have not received a regular high school diploma, including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year.

*707 KAR 1:290 Section 1 (1), KRS 158.150 (7) (c); 34 CFR 300.101 (a)*

Oldham County Schools (OCS) provides the child and parents all of the rights under Part B of the Individuals with Disabilities Education Act (IDEA), Kentucky laws, and administrative regulations.

### **1. Standards for Determining FAPE.**

(a.) 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.

*707 KAR 1:290 Section 1 (1); 34 CFR 300.101 (c)*

(b.) OCS provides services for students with disabilities consistent with the Kentucky Program of Studies, Core Content for Assessment, 707 KAR Chapter 1, and OCS Board Policy. Services for students with disabilities include:

- (i.) individualized instruction to meet the unique needs of a student with a disability, according to an Individual Education Program (IEP); and
- (ii.) access to a variety of programs, services, and activities provided for students without disabilities.

### **2. Incarceration of Adult Student - FAPE Not Required.**

The OCS is not be required to provide FAPE to a student eighteen (18) years old or older, who is placed in an adult correctional facility if, in the educational placement prior to placement in the correctional facility, the student was not identified as a child with a disability and did not have an IEP.

*707 KAR 1:290 Section 1 (1); 34 CFR 300.102 (a) (2)*

### **3. No Cost to Parents.**

(a.) The identification, evaluation, and educational placement of a child with disabilities, and the provision of special education and related services for a child with disabilities are at no cost to parents or to the child if emancipated. However, OSC is not precluded from charging incidental fees that are normally charged to children without disabilities or their parents as part of the general education program (e.g., activity fees, field trips, etc.).

(b.) OCS provides and uses local, state, federal, and other fiscal resources to provide special education and related services for children who have disabilities. Resources may include interagency agreements and third party providers such as private insurance and Medicaid.

### **4. Proper Functioning Of Hearing Aids.**

The Director assigns a person to ensure that a hearing aid worn in school by a child with a hearing impairment is functioning properly. OCS will ensure that the external components of surgically implanted devices of children with disabilities are functioning properly; however, the OCS is not responsible for the post-surgical maintenance, programming, or replacement of a medical device that has been surgically implanted. *707 KAR 1:290 Section 3; 34 CFR 300.113*

### **5. Prohibition of Mandatory Medication.**

OSC does not require a child to obtain a prescription for a Controlled Substance as a condition of attendance in school, receiving an evaluation, or receiving services. School personnel may consult or share classroom-

based observations with parents or guardians regarding student's academic, functional, or behavioral performance or regarding the need for evaluation to determine eligibility for special education services.

*707 KAR 1:290 Section 9; 34 CFR 300.174*

## **CHILD FIND SYSTEM - 4090.03- AR**

### **A. CHILD FIND REQUIREMENTS:**

#### **1. Procedures.**

The OCS makes a systematic effort to locate, identify, and evaluate each child:

- (a.) whose age is three (3) to twenty one (21) years;
- (b.) who resides in a home, facility, or residence within the OCS's geographical boundaries, including children with disabilities who attend private schools located within OCS boundaries, children who are highly mobile such as migrant and homeless children as described in 704 KAR 7:090, children who are wards of the state or are in state custody, and students who are advancing grade to grade resulting from passing a grade but who still may have a disability;
- (c.) who is either in or out of school;
- (d.) who may need special education and related services;

*707 KAR 1:300 Section 1 (1-3); 34 CFR 300.111 (a) (i) & (c)*

#### **2. Transition From Early Intervention Programs.**

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

*707 KAR 1:300 Section 1 (1-3); 34 CFR 300.111 (a) (i) & (c)*

#### **3. Availability of Child Find:**

OCS Child Find System is available throughout the calendar year during the normal business day. The OCS informs all involved personnel of due process and confidentiality procedures and requirements.

### **B. LOCATION ACTIVITIES**

#### **1. Community and Parental Involvement:**

OCS involves parents and the community in the Child Find System by actively seeking and locating children who may have disabilities by:

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

#### **2. Public Notice.**

(a) The SEA must give notice that is adequate to fully inform parents about the requirements of Sec. 300.123 including:

- (i) a description of the extent that the notice is given in the native languages of the various population groups in the state;
- (ii) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

- (iii) a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- (iv) a description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity. *34 CFR 300.612*

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

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

### **3. Training and Awareness.**

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

## **C. CHILD FIND ACTIVITIES IN PRIVATE SCHOOLS**

*See* “CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS” – 4090-12-AR

## **PROCEDURAL SAFEGUARDS - 4090.04- AR**

### **A. TIMELINES**

#### **1. Evaluation and Implementation Timeline.**

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

- (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. *707 KAR 1:320 Section 2 (2); 34 CFR 300.301 (c) (1) (i)*

#### **2. ARC Meeting Timeline.**

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

*707 KAR 1:320 Section 2 (3); 34 CFR 300.323 (c) (1)*

#### **3. Exception to the Timelines.**

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

- (a) if the child moves into the OCS district after consent for the initial evaluation is given but before the evaluation can be completed, as long as the OCS is making sufficient progress to complete the evaluation and the parent and the OCS agree to a specific time when the evaluation will be completed; or

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

*707 KAR 1:320 Section 2 (5); 34 CFR 300.301 (d) (1) & (e)*

### **B. ADMISSION and RELEASE COMMITTEE MEMBERSHIP**

#### **1. Membership.**

OCS will establish an Admission and Release Committee (ARC) with appropriate membership to address the process of identification, evaluation, placement of students, and the provision of a free appropriate public education for students with disabilities. *707 KAR 1:320 Section 3 (1); 34 CFR 300.321 (a)*. The ARC for each child with a disability will include:

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

*707 KAR 1:340 Section 1 (1); 34 CFR 300.501 (a)*

- (b.) REGULAR EDUCATION TEACHER: Not less than one (1) regular education teacher of the child if the child is or may be participating in the regular education environment to provide information about the general education curriculum for same aged peers; *707 KAR 1:320 Section 3*

- (c.) SPECIAL EDUCATION TEACHER: Not less than one (1) special education teacher of the child or a special education teacher who has knowledge of the disability or suspected disability, or, if appropriate, at least one special education provider of the child; *707 KAR 1:320 Section 3*

- (d.) ARC CHAIRPERSON: A representative of the OCS who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the OCS. The building principal is the

assigned OCS representative. The principal may designate another individual to serve as ARC Chairperson by notifying the Director of the designee and his or her qualifications to serve as ARC Chairperson. The Director sends a list of approved designees to the Superintendent in order to obtain OCS Board of Education approval. 707 KAR 1:320 Section 3

(e.) INTERPRETER OF EVALUATION RESULTS: An individual who can interpret the instructional implications of evaluation results, who may also be the regular education teacher, special education teacher, or ARC chairperson referenced in subparagraphs (b.) through (d.). 707 KAR 1:320 Section 3

(f.) OTHERS INVITED BY PARENT OR OCS: An individual who has knowledge or special expertise regarding the child, at the discretion of the parent or the OCS; 707 KAR 1:320 Section 3

(g.) RELATED SERVICES PROVIDERS: Related services personnel, as appropriate; 707 KAR 1:320 Section 3

(h.) THE CHILD: The child, if appropriate. 707 KAR 1:320 Section 3

(i.) PROFESSIONALS REQUIRED WHEN A CHILD IS SUSPECTED OF A SPECIFIC LEARNING DISABILITY: *See subsection 7 below.*

(j.) AGENCY REPRESENTATIVES INVOLVED IN TRANSITION PLANNING: 707 KAR 1:320 Section 4

(k.) EARLY INTERVENTION REPRESENTATIVES. If the purpose of the ARC is to discuss transition from the early intervention program into the preschool program, a representative of the early intervention program shall be invited to the initial transition ARC meeting if the parent requests. The Individualized Family Service Plan that was used by the early intervention program shall be considered when developing the new IEP for the child. 707 KAR 1:320 Section 3 (6); 34 CFR 300.321 (f)

## **2. Selection of Special Education Teacher.**

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

(a.) the qualifications of the teacher and the knowledge of the identified disability or suspected disability supported in the initial referral for possible special education and related services;

(b.) whether the special education teacher currently works with the child receiving special education and related services; and

(c.) whether the special education teacher may serve the child who is moving from one educational setting to another. 34 CFR 300.344

(d.) The Special Education Teacher:

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

### **3. Selection of Regular Education Teacher.**

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

- (i) positive behavioral interventions and strategies for the child;
- (ii) supplementary aids and services; and
- (iii) program modifications or supports for school personnel that will be provided for the child.

*707 KAR 1:320 Section 5 (5); 34 CFR 300.324 (a) (3)*

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

(c.) Where instruction is provided by more than one regular education teacher, OCS requires only one of the teachers to attend the ARC meeting. The regular education teacher who is, or may be, responsible for implementing the IEP should attend the meeting. If the child has more than one regular education teacher responsible for implementing a portion of the IEP, the ARC Chairperson may designate which teacher or teachers will serve, taking into account the best interest of the child. Although not all the child's teachers may attend the ARC, the ARC Chairperson ensures each teacher is informed about the IEP prior to implementation.

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

(e.) The regular education teacher:

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

### **4. Person who can Interpret Instructional Implications of Evaluation.**

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

- (a.) provide information regarding needed areas of assessment;
- (b.) assist in explaining assessment procedures;
- (c.) interpret the instructional implications of evaluation results;
- (d.) assist in applying eligibility criteria for a given area of disability; and
- (e.) provide input into the development and implementation of the IEP.

### **5. Related Services Personnel.**

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

## **6. Child with a Disability.**

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

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

*707 KAR 1:320 Section 3 (4), Section 4 (3-4); 34 CFR 300.321 (b) (1)*

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

*707 KAR 1:320 Section 4 (4); 34 CFR 300.321 (b) (2)*

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

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

*707 KAR 1:340 Section 9 (6); 707 KAR 1:360 Section 10; 34 CFR 300.320 (c)*

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

(a.) If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include other professionals, relative to the areas of concern, such as the school psychologist, speech-language pathologist, or educational specialist, in addition to the personnel listed in Section B.1. above.

*707 KAR 1:320 Section 3 (5); 34 CFR 300.308 (b)*

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

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

## **8. Agency Representatives Involved in Transition Planning.**

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

*707 KAR 1:320 Section 3 (4); 34 CFR 300.321 (b) (3)*

## **9. Legal Representatives.**

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

## **C. EXCUSAL FROM ARC MEETINGS**

### **1. When Member's Area Is Not Being Discussed.**

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

*707 KAR 1:320 Section 3 (2); 34 CFR 300.321 (e) (1)*

### **2. When Member's Area Is Being Discussed.**

A member of the ARC team may be dismissed from attendance, in whole or in part, if the parents and the OCS 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 OCS 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.

*707 KAR 1:320 Section 3 (3); 34 CFR 300.321 (e) (2)*

## **D. NOTICE OF ARC MEETINGS**

### **1. Contents of Notice of ARC Meetings.**

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

(a.) the purpose of the meeting;

(b.) the proposed date and time of the meeting;

(c.) location of the meeting;

(d.) who will be in attendance;

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

(f.) notice that the OCS will invite representatives from the early intervention program to the initial meeting, if the parents request it.

*707 KAR 1:320 Section 4 (1-2) 34 CFR 300.322 (a) & (b) (1) (ii)*

### **2. Electronic Notice of Meeting.**

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

### **3. Waiver of Notice.**

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

### **4. Disciplinary or Safety Notice of ARC Meeting.**

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

*707 KAR 1:340 Section 3 (2); 34 CFR 300.503 (a)*

## **E. ADMISSIONS AND RELEASE COMMITTEE MEETINGS**

### **1. Conduct of ARC Meetings.**

The OCS will ensure that each child has an ARC that includes the membership in 707 KAR 1:320 Section 3 (SECTION B.1 OF THIS REGULATION) and that an ARC meeting is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

*707 KAR 1:320 Section 2 (1); 34 CFR 300.324 (b) (1)*

### **2. Parent Participation.**

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

*707 KAR 1:320 Section 4 (1); 34 CFR 300.322 (a)*

(b.) If the parent is unable to attend an ARC meeting, the OCS allows parent participation using other methods, which may include individual or conference telephone calls or video conferencing.

*707 KAR 1:320 Section 4 (5); 34 CFR 300.322 (c)*

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

*707 KAR 1:320 Section 4 (7); 34 CFR 300.322 (e)*

(d.) The parents participate by:

- (i.) providing information about the child, including information about the child outside the school setting;
- (ii.) providing input for development of the IEP;
- (iii.) giving written permission for evaluation, initial placement, and reevaluation; and
- (iv.) providing support for implementation of the IEP.

### **3. Conducting the ARC Meeting Without a Parent.**

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

*707 KAR 1:320 Section 4 (6); 707 KAR 1:340 Section 1 (3) parallels 34 CFR 300.322 (d)*

(b.) If the parent does not attend the meeting, the ARC Chairperson will mail a copy of the Conference Summary and enclosures discussed at the meeting to the parent. The OCS will initiate the proposed action as described in the Conference Summary.

### **4. Minor Changes to an IEP.**

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

*707 KAR 1:320 Section 2 (2); 34 CFR 300.324 (a) (6)*

## **5. Conversations and Non-ARC Meetings without Parent Present.**

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

*707 KAR 1:340 Section 1 (4); 34 CFR 300.501 (b) (2)*

## **6. Audio or Video Recordings of ARC Meetings.**

Unless necessary for the parent to understand the IEP or the IEP process, the OCS prohibits the use of recording devices at ARC meetings by anyone other than the ARC Chairperson. Any recording of an ARC meeting that is made and maintained by the OCS is an "education record" as defined by the Family Educational Rights and Privacy Act. The recording is subject to confidentiality requirements of the regulations under both FERPA and 707 KAR 1:360. The ARC Chairperson ensures that any such recording is maintained as a part of the child's special education record.

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

## **7. Conference Summary Action Notice.**

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

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

*707 KAR 1:340 Section 3 (3); 34 CFR 300.503 (b)*

## **8. Conference Summary Action Notice in Native Language or other Mode of Communication.**

The Conference Summary Action Notice provided by the OCS will be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. The native language of the parent of a child is the primary language used in the home (i.e., the language most frequently used for communication by the parent of the child). If the native language of the parent is not a written language, the Director will ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of this translation.

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

## **F. NOTICE OF PARENTAL PROCEDURAL SAFEGUARDS**

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

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

(e.) upon request by a parent.

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

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

## **G. PARENTAL CONSENT**

The ARC Chairperson will obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

*707 KAR 1:340 Section 5 (1); 34 CFR 300.300 (a)*

### **1. Consent for Initial Evaluation.**

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

### **2. Denial of Parent Consent for Initial Evaluation.**

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

*707 KAR 1:340 Section 5 (2); 34 CFR 300.300 (a) (3)*

### **3. Consent for Initial Evaluation When the Child is in the Custody of the State.**

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

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

*707 KAR 1:340 Section 5 (3); 707 KAR 1:340 Section 6 (1) referenced; 34 CFR 300.300 (a) (2)*

(b.) In order to document the reasonable efforts taken by the OCS to discover the whereabouts of the parents(s), the OCS shall keep a record of its attempts in the child's special education record which may include: (i) detailed records of telephone calls made or attempted and the results of those calls; (ii) copies of correspondence sent to the parents and any responses received; and (iii) detailed records of the visits made to the parent's home or place of employment and the results of those visits.

*707 KAR 1:340 Section 5 (4); 707 KAR 1:340 Section 6 (4); 34 CFR 300.322 (d)*

### **4. Consent for Reevaluation.**

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

*707 KAR 1:340 Section 5 (6); 34 CFR 300.300 (c) (1)*

(b.) Parental consent for reevaluation shall not be required if the OCS can demonstrate that:

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

*707 KAR 1:340 Section 5 (7); 34 CFR 300.300 (c) (2)*

## **5. Consent for Special Education and Related Services.**

The ARC Chairperson obtains written informed parental consent prior to the time a child receives special education and related services. The written consent signed by the parent states that the parent understands and agrees:

- (a.) to the provision of special education and related services in the least restrictive environment;
- (b.) that parental consent is given voluntarily; and
- (c.) that special education and related services will be provided as described in the IEP and in the placement(s) specified by the ARC in the Conference Summary Action Notice.

Additional consent is not required, even though the location(s) of the delivery of services may change. Any changes in the special education program of the child after initial placement are subject to prior notice requirements (Notice of ARC Meeting and Conference Summary Action Notice) but not subject to parental consent.

## **6. Denial or Revocation of Parent Consent for Services.**

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

*707 KAR 1:340 Section 5 (5); 34 CFR 300.300 (b) (3).*

(b.) The OCS shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the OCS decides not to pursue the consent through due process procedures set out in 707 KAR 1:340 Sections 9 and 11, and the OCS shall not be required to convene an ARC meeting or develop an IEP if the parent of the child: (i) fails to respond or refuses to consent to a request for evaluation; (ii) fails to respond or refuses to consent to a request for services; or (iii) refuses to consent to a reevaluation.

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

(c.) If consent is revoked, the OCS Director and the building principal ensure that the child remains in the child's current educational placement during any due process hearings and appeals unless the parent and the OCS agree otherwise.

## **7. Consent for Release of Information for Transition Services.**

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

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

## **8. No Parental Consent Required.**

Parental consent shall not be required for (a.) reviewing existing data as part of an evaluation or a reevaluation; or (b.) administering a test or other evaluation that is administered to all children unless consent is required of parents of all children before administration of that test or evaluation.

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

## **H. REPRESENTATION OF CHILDREN**

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

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

### **1. Definition of Parent.**

For purposes of these procedures, “Parent” is defined as one of the following as set forth in

*707 KAR 1:280 Section 1(43):*

(a.) A BIOLOGICAL OR ADOPTIVE PARENT OF A CHILD: Either one of the biological or adoptive parents, has parental rights unless there has been a judicial determination that limits or terminates their rights. Parents are considered available when a current residence or mailing address is identified by the ARC Chairperson. If parents are divorced but have joint legal custody, the Notice will be sent to both parents. However, the ARC may act with either parent in attendance at the meeting. A parent having sole legal custody is the decision-maker for the child.

(b.) A GUARDIAN: If there is no parent available and the person caring for the child is doing so as the result of State agency or court action rather than through an informal arrangement that was voluntarily agreed to by the parent, the ARC Chairperson requires this person to provide information regarding the legal status of the rights of the parent with respect to the child. This person does not qualify as the educational representative unless the person is a private individual (not the State) who can produce a court order that he or she has been granted guardianship of the child. The ARC chairperson obtains a copy of the court order and places a copy in the educational records of the child.

(c.) A PERSON ACTING IN THE PLACE OF A BIOLOGICAL OR ADOPTIVE PARENT. A grandparent, stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare, and who is acting in the place of a biological or adoptive parent will have the rights of the parent when the biological or adoptive parent is unavailable. The “*Authorization for Appointment of a Representative for Educational Decisions*” form or “*Statement of Authorization for Representation*” form may be used to document the parental representative.

(d.) A FOSTER PARENT: If the foster parent is willing to make the education decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child, a foster parent may act as a Parent if:

- (i) the biological or adoptive parents’ authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an on-going, long-term parental relationship with the child; or
- (ii) the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child’s behalf;

If a child is residing with a short-term foster parent (i.e. parental rights have not been extinguished), the OCS will follow the procedures applicable to locating the natural or biological parents. If no parent is known, their whereabouts cannot be determined, or parental rights have been terminated but the foster parent is in a short-term relationship with the child, the Director may assign the foster parent as a surrogate parent in accordance with paragraph (e.) below.

(e.) A SURROGATE PARENT who has been appointed in accordance with 707 KAR 1:340 Section 6.

*707 KAR 1:280 Section 1 (43); 34 CFR 300.30*

### **2. Presumption in Favor of Biological or Adoptive Parents.**

When more than one party meets the definition of Parent, the biological or adoptive parent will be presumed to be the parent for purposes of these procedures unless the biological or adoptive parent does not have the

legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of “Parent” to act as the parent of a child or to make educational decisions on behalf of a child, the order will prevail.

*707 KAR 1:340 Section 6 (2); 34 CFR 300.300 (a) (2)*

### **3. Appointment of Surrogate Parent.**

The OCS will appoint a surrogate parent to make educational decisions for the child if: (a) no individual can be identified as a parent as defined in 707 KAR 1:280; (b) after reasonable efforts, the OCS cannot discover the whereabouts of the parent; (c) the child is a ward of the state; or (d) the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431. *707 KAR 1:340 Section 6 (3); 34 CFR 300.515 (a)*. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 CFR Part 300, and 707 KAR Chapter 1 to make decisions about educational issues for a child.

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

### **4. Selection of Surrogate Parent Volunteers.**

(a.) A surrogate: (i) shall not be an employee of the Kentucky Department of Education, the OCS, or any other public agency that is involved in the education or care of the child; (ii) shall not have any personal or professional interest that conflicts with the interests of the child; and (iii) shall have knowledge and skills that ensure adequate representation of the child.

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

(b.) The ARC Chairperson may contact an eligible relative to determine if the person is willing to serve as a surrogate if the parent of a child is unavailable to serve as the representative of the child. If the ARC Chairperson informs the Director that there is no caregiver or relative eligible and willing to serve as surrogate, the Director selects a surrogate to serve as the educational representative for the child.

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

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

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

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

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

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

### **5. Training of Surrogate Parent Volunteers.**

The Director will provide information to persons selected as surrogate parents to assure these persons have sufficient knowledge and skills to effectively represent the child. The information includes:

- (a.) the role of the surrogate parent;
- (b.) the rights and responsibilities of parents of children with disabilities;
- (c.) available resources for additional information and assistance;
- (d.) procedures to follow to be excused from appointment when there is a possibility of a potential conflict of interest;
- (e.) conditions for termination as a surrogate; and
- (f.) notification that the surrogate has the right to represent the child in all matters related to the educational rights of the child.

## **6. Termination of a Surrogate Parent Assignment.**

The Director determines the surrogate is no longer needed according to the following criteria: (a.) the "parent" becomes known or is located; (b.) upon emancipation of the youth; (c.) the surrogate no longer meets the qualifications and criteria for being a surrogate parent; or (d.) the surrogate is not fulfilling his or her responsibilities. The Director sends written notice to the surrogate informing the surrogate of the termination and indicating the reasons for termination. A copy of the letter is maintained in the files of the Director.

## **7. Commitment to CHFS or DJJ.**

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

(b.) PARENTAL RIGHTS TERMINATED. If the ARC Chairperson determines that the child is a Ward of the State (i.e., parental rights have been terminated by the court), the ARC Chairperson will immediately contact the Director and obtain a copy of the court order verifying that the child is a Ward of the State and the Director appoints a surrogate parent.

(c.) PROTECTIVE CUSTODY. In instances that involve protective custody of the child, CHFS may inform the ARC Chairperson that parents must not learn information regarding the whereabouts of their child. In such cases, the ARC Chairperson requires that the CHFS representative provide OCS with a court order that prohibits parent involvement with the child. A copy of the order is filed in the child's cumulative records and special education records, and the Director appoints a surrogate because the child's parents are unavailable.

## **8. Unaccompanied Homeless Youth.**

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in Section 4 above until a surrogate parent can be appointed that meets all the requirements of 707 KAR 1:340 Section 6.

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

## **9. Age of Majority.**

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

*707 KAR 1:340 Section 6 (11); 34 CFR 300.520 (a)*

# **I. STATE (KDE) COMPLAINT PROCEDURES**

## **1. Right to File a Complaint.**

Any organization or individual including someone from outside the state may file a signed written complaint with the Kentucky Department of Education. The procedures for filing, including the information required and timelines for resolution are included in the Parent's Rights document and the KENTUCKY DEPARTMENT OF EDUCATION SPECIAL EDUCATION PROCEDURES MANUAL, November 2000. *707 KAR 1:340 Section 7(2); 34 CFR 300.15(a)*. The complaint shall include:

- (a.) a statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA regulations;
- (b.) the facts on which the statement is based;

- (c.) a signature and contact information for the complainant;
- (d.) name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431;
- (e.) name of the school the child is attending;
- (f.) a description of the nature of the problem, including facts related to the problem;
- (g.) a proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and
- (h.) information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.
- (i.) The party filing the complaint shall forward a copy to the LEA.

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

## **2. Procedures for Addressing the Complaint.**

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

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

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

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

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

## **3. Right to Appeal Written Decision from KDE/DECS.**

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

*707 KAR 1:340 Section 7(5); 34 CFR 300.660 (a) (1) (ii)*

## **4. Implementation of Final Decision.**

The KDE will ensure effective implementation of the final decision from a complaint. To achieve compliance, the KDE may apply: (a.) technical assistance activities; (b.) negotiations; or (c.) corrective actions.

*707 KAR 1:340 Section 7 (7); 34 CFR 300.152 (b)(2)*

## **J. MEDIATION PROCESS**

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

*707 KAR 1:340 Section 8(1); 34 CFR 300.506 (a)*

- (b.) The mediation process, if chosen, shall: (i) be voluntary; (ii) not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under these procedures; and (iii) be conducted by a qualified and impartial mediator trained in effective mediation techniques.

707 KAR 1:340 Section 9 (1); 34 CFR 300.506 (b) (1)

(c.) The Kentucky Department of Education shall maintain a list of qualified mediators who shall: (i) not be an employee of: the Kentucky Department of Education or the OCS; (ii) be chosen at random for the mediation process; and (iii) not have a personal or professional conflict of interest.

707 KAR 1:340 Section 9 (2); 34 CFR 300.506 (b) (3)

(d.) OCS uses the procedures and forms in the KENTUCKY DEPARTMENT OF EDUCATION'S SPECIAL EDUCATION PROCEDURE MANUAL 2000 and the KDE MEDIATION FOR STUDENTS WITH DISABILITIES to begin the process for mediation.

**2. Cost of Mediation.** The Kentucky Department of Education shall bear the cost of the mediation process.

707 KAR 1:340 Section 9 (3); 34 CFR 300.506 (b) (4)

**3. Mediation Sessions.** (a.) The sessions in the mediation process shall be: (i) scheduled in a timely manner not to exceed sixty (60) days; and (ii) held at a location that is convenient to both parties to the dispute.

707 KAR 1:340 Section 9 (4); 34 CFR 300.506 (b) (5)

(b.) 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.

707 KAR 1:340 Section 9 (7); 34 CFR 300.506 (a)

**4. Resolution at Mediation Session.** (a.) In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that: (i) sets forth the resolution and a timeline in which it shall be implemented; (ii) states that all discussions that occurred in the mediation process shall be confidential; and (iii) may not be used as evidence in any subsequent due process hearing or civil proceeding.

707 KAR 1:340 Section 9 (5); 34 CFR 300.506 (b) (6-7)

(b.) Both the parent and a representative of the OCS who has the authority to bind the OCS 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.

707 KAR 1:340 Section 9 (6); 34 CFR 300.506 (b) (7)

## **K. DISPUTE RESOLUTION**

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

707 KAR 1:340 Section 10 (1); 34 CFR 300.510 (a)

(b.) The purpose of this meeting is: (i) to allow the parents to discuss their due process hearing request; (ii) to discuss the facts that formed the basis of the request; and (iii) to give the OCS an opportunity to resolve the complaint.

707 KAR 1:340 Section 10 (2); 34 CFR 300.510 (a) (2)

**2. Waiver.** This meeting shall not take place if the parents and the OCS agree in writing to waive the meeting or agree to use the mediation process.

707 KAR 1:340 Section 10 (3); 34 CFR 300.510 (a) (3)

**3. Agreement.** (a.) If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is: (i) signed by both the parent and a representative of the OCS who has the authority to

bind the OCS; (ii) placed in the student's education record; and (iii) is enforceable in any state court of competent jurisdiction or a district court of the United States.

*707 KAR 1:340 Section 10 (4); 34 CFR 300.510 (d)*

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

*707 KAR 1:340 Section 10 (5); 34 CFR 300.510 (e)*

(c.) If the OCS 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.

*707 KAR 1:340 Section 10 (6); 34 CFR 300.510 (b)*

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

*707 KAR 1:340 Section 10(7); 34 CFR 300.510(b)(2)*

**4. Failure of Parent to Participate** (a.) 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.

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

*707 KAR 1:340 Section 10 (8 & 9); 34 CFR 300.510 (b) (3-4)*

(c.) The OCS will keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as: (i) detailed records of telephone calls made or attempted and the results of those calls; (ii) copies of correspondence sent to the parents and any responses received; and (iii) detailed records of visits made to the parents' home or place of employment and the results of the visits.

*707 KAR 1:340 Section 10 (10); 34 CFR 300.322 (d)*

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

*707 KAR 1:340 Section 10(11); 34 CFR 300.510 (b)(5)*

**6. Effect on Hearing Timeline.** The forty-five (45) day timeline for the due process hearing in 34 CFR 300.515 starts the day after one of the following: (a.) both parties agree in writing to waive the resolution meeting; (b.) after either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or (c.) if both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the OCS withdraws from the mediation process.

*707 KAR 1:340 Section 10 (12); 34 CFR 300.510 (c)*

## **L. DUE PROCESS HEARINGS**

**1. Right to Due Process Hearing.** (a.) A parent or the OCS may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child or refusal to initiate or change the identification, evaluation, or educational placement of the child.

707 KAR 1:340 Section 8 (2); 34 CFR 300.507 (a)

(b.) PRIVATE SCHOOL. Hearing rights for children unilaterally placed in private schools by their parents are limited to Child Find, evaluation, and reevaluation issues. *See procedures for “CHILD ENROLLED IN PRIVATE SCHOOL BY PARENTS” – 4090.12-AR.*

(c.) MEDIATION. When a hearing is initiated, the OCS shall inform the parent of the availability of mediation to resolve the dispute. *707 KAR 1:340 Section 8 (3); 34 CFR 300.507 (a) (2)*

(d.) LEGAL SERVICES. The OCS 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 OCS initiates a hearing. *707 KAR 1:340 Section 8 (4); 34 CFR 300.506 (a)*

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

- (i) the name of the child;
- (ii) the address of the residence of the child;
- (iii) the name of the school the child is attending;
- (iv) a description of the nature of the problem; and
- (v) facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

*707 KAR 1:340 Section 11(1); 34 CFR 300.508(b)*

(b.) The party requesting the hearing (the parent, the parent's authorized agent, or OCS) submits “Request for a Due Process Hearing” form to the Director, Division of Exceptional Children Services, Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601.

*707 KAR 1:340 Section 11(2); 34 CFR 300.508(a)*

(c.) 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 paragraph 2.(a) above. This notice shall be provided to the other party and to the Kentucky Department of Education. *707 KAR 1:340 Section 11 (3); 34 CFR 300.508 (a)*

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

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

**5. Child Status during Pendency of Judicial Proceedings.** (a.) Except as provided in 707 KAR 1:340, Section 14 (Manifestation Determination) and Section 15 (Appeals), during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall remain in the child’s current educational placement, unless the parent and the OCS 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 OCS 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 OCS.

*707 KAR 1:340 Section 12 (3); 34 CFR 300.518 (a) & (c)*

(b.) If the hearing involves an application for initial admission to public school, and if there is consent of the parents, the child shall be placed in the public school in an age and grade appropriate placement until the proceedings are final. *707 KAR 1:340 Section 12 (4); 34 CFR 300.518 (b)*

(c.) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section. *34 CFR 300.518(d)*

## **M. APPEALS BY PARENT OR THE OCS.**

**1. Exceptional Children Appeals Board.** A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. To request an appeal, the party sends, by certified mail, within thirty (30) calendar days of the hearing officer's decision, a written request for an appeal to the Exceptional Children Appeals Board, Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601. The requesting party also sends a copy of the appeal to the opposing party. *707 KAR 1:340 Section 12 (1); 34 CFR 300.510 (b) (1)*

**2. Civil Action.** A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court. *707 KAR 1:340 Section 12 (2); 34 CFR 300.514 (d); 34 CFR 300.516 (a)*

## **DISCIPLINE OF CHILDREN WITH DISABILITIES - 4090.05-AR**

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

### **A. STUDENT DISCIPLINE – NO CHANGE OF PLACEMENT.**

#### **1. Behavior Interventions and Supports.**

(a.) In the case of a child whose behavior impedes his or her learning, or that of others, the ARC will, consider, if appropriate, strategies, including positive interventions strategies and supports, to address that behavior.  
*707 KAR 1:320 Section 5 (2) (a); 34 CFR 300.320 (a) (1) (i)*

(b.) The Oldham County Schools (OCS) Student Handbook, which is provided to all students at the beginning of the school year, describes the expectations for child behavior and consequences for misbehavior and policy violations. Consequences are applied for all children, including children with disabilities, as long as the consequence does not conflict with the provisions of an IEP or behavioral intervention plan.

#### **2. In-School Suspension.**

An in-school suspension will not be considered as part of the days of suspension addressed in §300.530 (the 10-days of Removal) as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. However, portions of a school day during which a child has been suspended may be considered as a removal for determining whether there is a pattern of removals as defined in §300.536.

*34 CFR Part 300, Comments, p. 46715*

#### **3. Student Behavior on the School Bus.**

(a.) The principal or person designated by the board shall have the authority to suspend bus riding privileges until the behavior problem is resolved. A student whose bus riding privileges have been suspended will not be allowed on the bus again until the driver receives written permission by the principal or his designee.

*702 KAR 5:030 (19-20)*

(b.) If bus transportation is a related service on the child's IEP, a bus suspension will be treated as a suspension day under §300.530 unless the OCS provides the transportation service in some other way. If bus transportation is not a related service on the child's IEP, a bus suspension will not be treated as a suspension under §300.530 and the parent and the student will have the same obligation to get the student to and from school as a non-disabled student who is suspended. OCS will consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in the child's IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.

*34 CFR Part 300, Comments, p. 46715*

#### **4. Removal for 10 or Fewer School Days.**

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

*707 KAR 1:340 Section 13 (2); 34 CFR 300.530 (b) (1)*

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

*707 KAR 1:340 Section 13 (3); 34 CFR 300.530 (b) (1)*

(c.) For suspension purposes, any portion of a school day is considered a full day.

(d.) The OCS does not provide educational services to children with or without disabilities during periods of removal of 10 or fewer school days in the same school year.

*707 KAR 1:340 Section 13(8); 34 CFR 300.530(d)(3)*

## **B. CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS**

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

*707 KAR 1:340 Section 13(1); 34 CFR 300.530(a)*

**2. Notice to Parents.** (a.) NOTICE OF REMOVAL. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the OCS will notify the parents of that decision, and provide the parents the procedural safeguards notice as contained in 707 KAR 1:340 Section 4.;

*707 KAR 1:340 Section 14 (6); 34 CFR 300.530 (h)*

(b.) NOTICE OF MEETING. Unless waived by the parent, the OCS will provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

*707 KAR 1:340 Section 3 (2); 34 CFR 300.503 (a)*

**3. Action Constituting Change of Placement.** A “Change in Placement” because of disciplinary removals means a change of placement that occurs because:

(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 removals to one another.

(c.) This determination is subject to review through due process and judicial proceedings.

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

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

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

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

(a.) the removals total more than ten (10) school days in a year;

- (b.) the child's behavior for the current removal substantially similar to the child's behavior in previous incidents;
- (c.) the length of each removal;
- (d.) the total amount of time the child has been removed; and
- (e.) the proximity of removals to one another

**C. MANIFESTATION DETERMINATION**

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

- (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 OCS's failure to implement the IEP.

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

*707 KAR 1:340 Section 14 (1); 34 CFR 300.530 (e)(1); 707 KAR 1:340 Section 14 (2); 34 CFR 300.530 (e) (2); 34 CFR 300.530 (c)*

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

*707 KAR 1:340 Section 13(4)*

**3. Behavior IS a Manifestation of the Disability.** If the ARC determines that the conduct was a manifestation of the child's disability, the ARC will:

(a.)(i.) conduct a functional behavioral assessment unless the OCS has conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or

(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 OCS and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because the violation involved drugs, weapons or serious bodily injury.

*707 KAR 1:340 Section 14(4); 34 CFR 300.530 (f)(1) & (2)*

(c.) take immediate steps to remedy deficiencies if the student's conduct was the direct result of the OCS's failure to implement the IEP.

*707 KAR 1:340 Section 14 (3); 34 CFR 300.530 (e) (3)*

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

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

**1. Services Provided When Removal is in Excess of Ten Consecutive Days.** A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:

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

(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. The Director arranges for appropriate OCS teachers and related service personnel to provide special education and related services for the student.

(c.) The OCS will provide educational services for a child with a disability during a period of expulsion or long-term removal.

(d.) These services may be provided in an interim alternative educational setting.

*707 KAR 1:340 Section 13 (6) & (7); 34 CFR 300.530 (d) (1) & (2)*

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

*707 KAR 1:340 Section 13 (9); 34 CFR 300.530 (d) (4)*

## **E. REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING**

### **1. 45-Day Placement.**

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

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

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

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

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

### **2. Definitions Related to 45-Day Placement.**

(a.) CONTROLLED SUBSTANCE means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (20 U.S.C. 812(c)); *34 CFR 300.530 (i) (1)*

(b.) **ILLEGAL DRUG** means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other Federal law. *34 CFR 300.530 (i) (2)*

(c.) **SERIOUS BODILY INJURY** means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. *18 U.S.C. 1365 (3) (h); 34 CFR 300.530 (i) (3)*

(d.) **WEAPON** means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length. *18 USC 930 (g) (2); 34 CFR 300.530 (i) (4)*

**3. Determination of IAES.** The ARC of the child shall determine the interim alternative educational setting (IAES) and the services for any child removed when a student’s behavior has been determined not to be a manifestation of the student’s disability or when a child is removed for drugs or weapons under the 45-day provision in paragraph 1 of this Section.

*707 KAR 1:340 Section 14 (7); 34 CFR 300.530 (d) (2)*

**4. Appeal from IAES Decisions or Manifestation Determination.** (a.) The parent of a child with a disability who disagrees with any decision regarding placement for disciplinary reasons, or the manifestation determination, or the OCS if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a due process hearing by using the procedures in 707 KAR 1:340 Sections 8 and 11.

*707 KAR 1:340 Section 15 (1); 34 CFR 300.532 (a)*

(b.) A hearing officer shall hear and make a determination regarding an appeal requested pursuant to this subsection. *707 KAR 1:340 Section 15(2).*

(c.) In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may: (i) return the child to the placement from which the child was removed; or (ii) 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.

*707 KAR 1:340 Section 15 (2-3); 34 CFR 300.532(b)*

(d.) 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.

*707 KAR 1:340 Section 15 (2) (3) (5); 34 CFR 300.532 (b)*

**5. Stay Put Provision During Appeal.** When an appeal has been requested pursuant to this section, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time ordered by the hearing officer under paragraph 4.(c.)(ii) above, whichever occurs first, unless the parent and the OCS agree otherwise.

*707 KAR 1:340 Section 15 (4); 34 CFR 300.533*

## **F. PROTECTION FOR CHILDREN NOT YET ELIGIBLE FOR IDEA**

A child who has not been identified as having a disability, who is facing disciplinary procedures, may assert protection under IDEA if the district had knowledge that the child should have been identified as a child with a disability.

### **1. Basis of Knowledge.**

The OCS will be deemed to have knowledge that a child is “a child with a disability” if:

(a.) PARENT CONCERN: 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 or to the teacher of the child, that the child is in need of special education and related services;

(b) REQUEST FOR EVALUATION: the parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or

(c) TEACHER CONCERN: the teacher of the child, or other OCS personnel, has expressed concern about a pattern of behavior or performance of the child directly to the director of special education or to other supervisory personnel of the OCS. *707 KAR 1:340 Section 16 (1); 34 CFR 300.534 (b)*

### **2. Circumstances Where Knowledge is Not Attributed to the OCS.**

The OCS will not be deemed to have knowledge that a child may be “a child with a disability” if as a result of receiving information the OCS:

(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.) parents refused to consent to an evaluation or refused initial services.

*707 KAR 1:340 Section 16(2); 34 CFR 300.534 (c)*

### **3. No IDEA Protection if District is Without Knowledge.**

If the OCS does not have knowledge that a child is “a child with a disability” prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as applied to children without disabilities. *707 KAR 1:340 Section 16 (3); 34 CFR 300.534 (d) (1)*

### **4. Evaluation Request During Disciplinary Proceedings.**

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 will be conducted in an expedited manner. Until the evaluation is completed, the child will remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

*707 KAR 1:340 Section 16 (4); 34 CFR 300.534 (d) (2)*

## **G. REPORTING TO LAW ENFORCEMENT AGENCIES**

**1. Crimes Committed by Children with Disabilities.** Notwithstanding any provisions of Kentucky’s Special Education Programs Administrative Regulations (707 KAR Chapter 1) the OCS may report a crime committed by a child with a disability to appropriate authorities.

*707 KAR 1:340 Section 17(1); 34 CFR 300.535(a)*

**2. Temporary Injunctive Relief for Dangerous Children.** If the ARC determines that a child's behavior is related to his disability, the child shall not be suspended any further or expelled unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. ... The OCS may seek temporary injunctive relief through the courts if the parent and the other members of the ARC cannot agree upon a placement and the current placement will likely result in injury to the student or others.

*KRS 158.150 (7) (c)*

**3. Transmission of Records.** If the OCS reports a crime committed by a child with a disability, it will ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g. OCS staff follows Board Policy for the release of special education records. *707 KAR 1:340 Section 17(2); 34 CFR 300.535(b)(2)*

## **EVALUATION - 4090.06-AR**

### **A. REFERRAL SYSTEM**

#### **1. Requirements.**

(a.) The OCS will have a system that explains how referrals from district or non-district sources will be accepted and acted upon in a timely manner. *707 KAR 1:300 Section 3 (1)*

(b.) The referral system will 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. *707 KAR 1:300 Section 3 (2); 34 CFR 300.646*

(c.) The OCS will ensure that: (i) 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 (ii) 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. *707 KAR 1:300 Section 3 (3); see also 707 KAR 1:310 Section 2(6) for SLD; 34 CFR 300.309 (b)*

(d.) If the child has not made adequate progress after an appropriate period of time during which the conditions in subparagraph 1.(c.) above, or *707 KAR 1:310 Section 2(6)* have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered. *707 KAR 1:300 Section 3 (3); 707 KAR 1:310 Section 2; 34 CFR 300.309 (c) (1)*

#### **2. Referral Sources.**

(a.) **SCHOOL PERSONNEL.** The building Principal or designee assists individuals with knowledge about a child in understanding and completing the referral process when appropriate. A teacher or other staff member who seeks to refer a child will be supported in the development of appropriate research-based instructional and/or behavioral interventions for the child.

(b.) **PARENT OR OTHER NON-SCHOOL SOURCE.** If a parent or other person not employed by OCS seeks assistance for a child whom he or she believes to have a disability, the building principal or designee will provide assistance ensure the written referral includes the required information and is submitted to the ARC Chairperson.

(c.) When a referral is submitted by any source, the ARC Chairperson will convene an ARC meeting to determine if the referral is complete.

#### **3. Early Intervening Services.**

The OCS may conduct early intervening services for students from kindergarten through 12th grade (with particular emphasis on students in kindergarten through grade three) who need additional academic and behavioral support in order to be successful in the regular education environment prior to referral for special education. The OCS will not spend more than 15% of the money received under IDEA Part B on coordinated early intervening services. *707 KAR 1:300 Section 2; 34 CFR 300.226*

#### **4. Referral Information.**

The written referral and student performance information includes the following: (a.) **STUDENT INFORMATION.** Personally identifiable data including name and date of birth of child, student identification number, parent name, address, and phone number;

(b.) **SCREENING RESULTS.** Results of vision, hearing, communication and other screenings (issues identified by failed screenings are addressed prior to completion of the referral document). In the event that screening information required by OCS for all students is not available for the child, such screenings will be conducted prior to administering additional assessments.

(c.) **ACADEMIC HISTORY.** An educational history which may include: school(s) attended; patterns of attendance (e.g., excessive absences, excessive tardiness), discipline reports, suspension(s); current level or grade placement; years in school; performance on district-wide and state mandated assessments; results of systematic screenings (e.g., common formative assessment, progress monitoring, health screenings); a summary of achievement data; family and student programs (provided through the school or other agencies) in which the child has received services; Individual Learning Plan for students age 14 and older; and other relevant information;

(d.) **STATUS INFORMATION.** A written description of the current status of the child in relation to the Program of Studies and similar age peers in the following areas: communication; academic achievement, functional performance or developmental skills; health, hearing, vision and motor abilities; social and emotional interaction; general intelligence; and

(e.) **INTERVENTION RESULTS.** For each area of concern, documentation of the results of research-based interventions provided in regular education settings by qualified personnel. The documentation will include the following information to the extent applicable:

- (i) area(s) of concern;
- (ii) specific research based intervention(s) (e.g., strategies, methods, materials);
- (iii) intensity, frequency and duration of the intervention (fidelity);
- (iv) methods used for documenting performance; and
- (v) measures of student's response to the intervention(s).

## **B. ARC EVALUATION MEETING**

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

- (a.) review student performance and referral information, and determine if the student significantly differs from peers;
- (b.) determine if the interventions implemented were appropriate;
- (c.) decide whether the information is sufficient and supports that the child may have an educational disability;
- (d.) specify the suspected disability or disabilities, if any;
- (e.) identify the areas of assessment for the suspected disability or disabilities; and
- (f.) obtain parental consent for evaluation before initiating any individual evaluation procedure.

### **1. ARC Review of Existing Data and Referral Information.**

(a.) Assessment tools and strategies shall be used that provide relevant information that directly assists and is used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, if necessary, shall review existing evaluation data on the child including:

- (i) evaluations and information provided by the parents;
- (ii) current classroom-based, local, or state assessments and classroom-based observations; and
- (iii) observations by teachers and related services providers.

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

*707 KAR 1:300 Section 4 (3); 34 CFR 300.302*

## **2. Review of Appropriate Interventions.**

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

- (a.) the intervention addressed the area(s) of concern;
- (b.) the interventions were research based (*e.g.* strategies, methods, materials);
- (c.) the interventions were implemented with fidelity; and
- (d.) the interventions were effective by analyzing the student's rate of learning.

## **3. Determination of Sufficient Information.**

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

- (i) 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;
- (ii) the present levels of academic achievement and related developmental needs of the child;
- (iii) 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
- (iv) whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum. *707 KAR 1:300 Section 4 (14-15); 34 CFR 300.305 (a)*

(b.) Evaluation information will be determined sufficient if:

- (i) multiple non-discriminatory methods or measures were used to evaluate the areas of concern previously specified by the ARC;
- (ii) data on family, environmental, and cultural factors is available for analysis to assist in the determination of the impact on educational performance;
- (iii) referral data and additional information document the present levels of academic achievement and related developmental needs of the child, including how the disability affects the child's involvement and progress in the general curriculum;
- (iv) information given provides objective and reliable indicators of the child's performance;
- (v) the documentation of the evaluation information is complete and reflects the information collected by the multidisciplinary team in all areas related to the suspected disability.

(c.) If sufficient information is not available, the ARC will determine what information needs to be collected, and a date to reconvene the meeting for review of that data.

## **4. Determination of a Suspected Disability.**

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

*707 KAR 1:300 Section 4(10); 34 CFR 300.304 (c) (4)*

## **5. Identifying the Areas for Assessment.**

(a.) The evaluation will be sufficiently comprehensive to identify all the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. *707 KAR 1:300 Section 4(11); 34 CFR 300.304 (c) (6)*

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

## **6. Requesting Consent for Evaluation Services.**

(a.) The OCS must obtain informed parental consent before conducting any initial evaluation or reevaluation activities and before the initial provision of specially designed instruction and related services. *707 KAR 1:340 Section 5 (1); 34 CFR 300.300 (a) (1)*

(b.) If the parent does not give written consent for the evaluation, the ARC Chairperson and the Director will follow OCS procedures for denial or revocation of parental consent.

(c.) OCS will ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of the services. The results of the evaluation will be used by the ARC in meeting the requirements for developing an IEP as provided in 707 KAR 1:320. *707 KAR 1:300 Section 4 (1); 34 CFR 300.301 (a)*

## **7. Information does not Support a Suspected Disability.**

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

## **8. Students who Transfer During the Evaluation Process.**

(a.) Assessments and evaluation of children with disabilities who transfer from one school district to another in the same academic year will be coordinated with the previous and current schools as necessary and as expeditiously as possible, to ensure prompt completion of a full evaluation. *707 KAR 1:300 Section 4(13); 34 CFR 300.304(c) (5)*

(b.) The sixty (60) school-day timeline shall not apply in the following situations: (i) if the child moves to a new local school district after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new school district is making sufficient progress to complete the evaluation and the parent and the new school district agree to a specific time when the evaluation shall be completed; or (ii) if the parent repeatedly fails or refuses to produce the child for evaluation. *707 KAR 1:320 Section 2 (5); 34 CFR 300.301 (d) (1) & (e)*

# **C. EVALUATION INSTRUMENTS AND PROCESS**

## **1. Assessment Tools.**

(a.) A variety of assessment tools and strategies will be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum described in the Kentucky Program of Studies. *707 KAR 1:300 Section 4 (5); 34 CFR 300.304 (b) (1)*

(b.) The OCS will use assessment tools and strategies that provide relevant information that directly assists and is used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, if necessary, will review existing evaluation data on the child including: (i) evaluations and information provided by the parents; (ii) current classroom-based, local, or state assessments and classroom-based observations; and (iii) observations by teachers and related services providers.

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

## **2. Assessment Tool Criteria.**

The OCS will use the following criteria and procedures in the administration of assessments.

(a.) Standardized tests shall: (i.) have been validated for the specific purpose for which it is used; (ii.) be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests; and (iii.) be conducted under standard conditions unless a description of the extent to which it varied from standard conditions is documented in the evaluation report.

*707 KAR 1:300 Section 4(6); 34 CFR 300.304 (c)(1)*

(b.) 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.

*707 KAR 1:300 Section 4 (7); 34 CFR 300.304 (c) (2)*

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

*707 KAR 1:300 Section 4(9); 34 CFR 300.304(b)(2)*

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

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

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

*707 KAR 1:300 Section 4(8); 34 CFR 300.304(c)(3)*

## **3. Observations for Children Suspected of Having a Specific Learning Disability.**

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

*707 KAR 1:310 Section 2(5); 34 CFR 300.310*

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

- (i) the specific behavior(s) related to areas of concern;
- (ii) the setting(s) in which observations occurred;
- (iii) times and lengths of observations, dates, and observers;
- (iv) criteria against which the targeted behavior(s) is judged (e.g., behavior(s) of comparison group, expected appropriate behavior); and

- (v.) data collected over time demonstrating the frequency, duration, latency, or intensity of targeted behavior(s).

#### **4. Tests Administered in the Native Language or Other Communication Mode.**

Tests and other evaluation materials used to assess a child will be (a.) selected so as not to be discriminatory on a racial or cultural basis; and

(b.) 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. *707 KAR 1:300 Section 4(2); 34 CFR 300.304(c) (1)*

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

(d.) Materials and procedures used to assess a child with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the child has a disability and needs specially designed instruction and related services, rather than measuring the child’s English language skills. *707 KAR 1:300 Section 4(4)*

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

#### **5. Responsibilities of Evaluation Personnel.**

(a.) STANDARD INDUSTRY PRACTICE. OCS evaluation personnel will select and administer current editions of assessment instruments and will follow the “Standard Industry Practice” (“SIP”) for using newly revised assessment instruments. The SIP mandates that two years after the release of a new assessment instrument, the old assessment is considered out of date.

(b.) TRAINING. The Director will ensure that each person administering and interpreting evaluation instruments meets the training specifications stated in the test administration manual. OCS evaluation personnel are trained in:

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

(c.) OCS evaluation personnel will ensure that: (i) evaluation procedures that are appropriate for the age and ability level of the child are used; and (ii) the procedures selected are normed on a population that includes children of the same age.

- (d.) Each evaluator:
- (i.) selects tests and other procedures they have been trained to administer;
  - (ii.) administers, scores, and interprets the tests and procedures selected according to the instructions specified in the test manuals or through training for each test or procedure;
  - (iii.) makes sure that tests are not administered to children whose age, disability, linguistic or cultural background is outside the range of his or her training or experience; and

(iv.) describes any modification of standard test administration procedures or scoring with cautions regarding the possible effects of such modifications on validity.

## **6. Over-Representation or Under-Representation.**

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

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

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

## **7. Contractual Arrangements with Evaluators.**

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

## **8. Written Evaluation Report.**

(a.) The OCS will provide a copy of the evaluation report to the parent.

*707 KAR 1:310 Section 1 (1); 34 CFR 300.306 (a) (1)*

(b.) The written report of the evaluation data used and interpreted by the ARC for determining eligibility and planning an appropriate program may include:

- (i) child identification information (i.e., name, parents, phone, date of birth, grade, school);
- (ii) a comparison and interpretation of the performance of the child to similar age peers;
- (iii.) the full name of instruments and procedures used, the date each was administered and by whom; any departures from standard test administration procedures and the reasons for that departure;
- (iv) data and sources from standardized, norm-referenced measures which include standard scores and not solely percentiles, grade, or age equivalents; are reported with confidence intervals; and are in a form that allows for inter-test comparisons (e.g., converted to age-based scores);
- (v) data from all informal measures, including results of interventions tried before referral and a summary of behaviors noted during the observation(s) of the child;
- (vi) an explanation of any discrepancies among evaluation results, e.g., between formal test results and the customary behaviors and daily activities of the child;

- (vii) statements about the unique or individual differences of the child related to the education environment and success in general education curriculum;
- (viii) statements about specific classroom tasks or contexts that are unique to the child (e.g., error pattern analysis, learning style or learning preferences; incentive or motivational style; communication and interpersonal skills);
- (ix) statements about other factors that impact the educational performance of the child (e.g., medical, environmental, cultural, or linguistic factors);
- (x) Descriptions of the types of activities that might effectively meet the unique educational needs of the child (e.g., instructional techniques, modifications or adaptations; behavior management strategies; lighting, study carrels); and
- (xi) a list of the names and professional roles of all evaluators.

(c.) When computer-assisted reports are used, the program will (i.) allow for input of individually relevant data beyond demographic data; (ii.) respond to the specific concerns of the ARC; (iii.) analyze the data including the provision of recommendations that relate to individualized instructional planning specific to the individual child; and (iv) allow for application of Kentucky-specific eligibility criteria (i.e., Kentucky developed guidelines).

## **D. REEVALUATION**

**1. Timing of Reevaluations.** (a.) **MINIMUM OF EVERY THREE YEARS.** The OCS will ensure a reevaluation, unless the parent and LEA agree that a reevaluation is unnecessary. A reevaluation may consist of the review described in paragraph C.1.(b) above (EVALUATION – Assessment Tools)) and is conducted at least every three (3) years to determine:

- (i) the present levels of performance and educational needs of the child;
- (ii) whether the child continues to need specially designed instruction and related services; and
- (iii) whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.

*707 KAR 1:300 Section 4 (18); 34 CFR 300.305 (a) (2) (B)*

(b.) **PRIOR TO TERMINATION OF CHILD’S ELIGIBILITY.** The OCS will evaluate a child with a disability in accordance with 707 KAR 1:300 before determining that the child is no longer a child with a disability.

*707 KAR 1:300 Section 4 (20); 34 CFR 300.305 (e) (1-2)*

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

*707 KAR 1:300 Section 4(21); 34 CFR 300.305 (e)(3)*

(d.) A reevaluation will not be conducted more than once a year unless the parent and the OCS agree otherwise.

*707 KAR 1:300 Section 4 (19); 34 CFR 300.303 (b) (1)*

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

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

### 3. ARC Review of Data.

(a.) As with initial evaluations, assessment tools and strategies will be used that provide relevant information that directly assists and is used in the determination of the educational needs of the child. As part of any reevaluation, the ARC and other qualified professionals, if necessary, will review existing evaluation data on the child including:

- (i.) evaluations and information provided by the parents;
- (ii.) current classroom-based, local, or state assessments and classroom-based observations; and
- (iii.) observations by teachers and related services providers.

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

(b.) The OCS shall not be required to conduct a reevaluation, if:

- (i) after review of the existing data, the ARC determines:
  - (1.) a reevaluation is not necessary to determine whether the child continues to be eligible for services; and
  - (2.) a reevaluation is not warranted to determine the education or related services needs, including improved academic achievement and functional performance; and
- (ii) the parents or teacher do not request a reevaluation.

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

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

### 4. Determination of Sufficient Information.

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

- (i) whether the child has a particular category of disability and the educational needs of the child, or in the case of a reevaluation, whether the child continues to have a disability, and the educational needs;
- (ii) the present levels of academic achievement and related developmental needs of the child;
- (iii) 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
- (iv) whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum.

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

(b.) INFORMATION SUFFICIENT. (a.) If, for purposes of a reevaluation, the ARC determines that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the OCS will notify the child's parents:

- (i) of that determination and reasons for it; and
- (ii) of the right of the parents to request a reevaluation to determine whether, for purposes of services, the child continues to be a child with a disability.

*707 KAR 1:300 Section 4 (16); 34 CFR 300.305 (d) (1)*

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

(c.) The ARC Chairperson documents the decision and the reasons not to conduct further assessment for reevaluation on the Conference Summary. The ARC Chairperson includes in the Conference Summary,

the right of the parent to request a reevaluation. The ARC Chairperson gives the parents a copy of the Reevaluation Report and the Conference Summary.

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

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

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

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

**5. Re-administration of Cognitive Assessments.** The ARC will apply the following criteria to determine if re-administration of an individual intelligence test is necessary for a reevaluation: (i) the child has a minimum of two IQ scores with one being at or above age 9; and (ii) the child's IQ scores have a confidence interval of not less than 90%.

## **E. INDEPENDENT EDUCATIONAL EVALUATION**

### **1. Parent's Right to an Independent Educational Evaluation.**

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

*707 KAR 1:340 Section 2(1); 34 CFR 300.502 (a)(1)*

(b.) If a parent requests an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the OCS, the OCS will, without unnecessary delay: (i) initiate a due process hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense unless the OCS demonstrates in a due process hearing that the evaluation obtained by the parent did not meet OCS criteria.

*707 KAR 1:340 Section 2(3); 34 CFR 300.502 (b)(2)*

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

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

*707 KAR 1:340 Section 2(6); 34 CFR 300.502 (b)(1)*

(e.) The OCS may ask for the parent’s reasons why he or she objects to the OCS’s evaluation; however, the parent shall not be required to respond and the OCS shall not delay its action under 707 KAR 1:340 Section 2 while waiting for a response from a parent. *707 KAR 1:340 Section 2(4); 34 CFR 300.502 (b)(4)*

**2. Criteria for Independent Educational Evaluation.**

(a.) If an independent educational evaluation (IEE) is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner shall be the same as the criteria the OCS uses when it initiates an evaluation. Aside from these criteria, the OCS shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense. *707 KAR 1:340 Section 2 (5); 34 CFR 300.502 (e)(1-2)*

(b.) If a parent requests an independent educational evaluation, the OCS will provide information to the parent about where an independent educational evaluation may be obtained and the OCS’s applicable criteria for independent educational evaluations. *707 KAR 1:340 Section 2(2); 34 CFR 300.502 (a)(2).*

**3. Cost of Independent Educational Evaluation.**

(a.) If the OCS initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the OCS’s evaluation is appropriate, the parent still shall have the right to an independent evaluation, but not at public expense. *707 KAR 1:340 Section 2(7); 34 CFR 300.502 (b)(3)*

(b.) If a hearing officer, as a part of a due process hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense. *707 KAR 1:340 Section 2(9); 34 CFR 300.502 (d)*

**4. Results of Independent Educational Evaluation.**

If the parent obtains an independent educational evaluation at public or private expense and it meets the OCS’s criteria, the results of the evaluation will be considered by the ARC in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child. *707 KAR 1:340 Section 2(8); 34 CFR 300.502 (c)(1)*

**ELIGIBILITY DETERMINATION - 4090.07-AR**

**A. ARC REVIEW OF EVALUATION INFORMATION**

**1. Analysis of Data.**

Upon analysis of intervention and assessment data, the ARC will determine whether the child is “a child with a disability” defined in 707 KAR 1:280 to the extent that specially designed instruction is required in order for the child to benefit from education. The OCS will provide a copy of the evaluation report and the documentation of determination of eligibility to the parent. *707 KAR 1:310 Section 1(1); 34 CFR 300.306 (a)(1-2)*

**2. Decision-making Procedure.**

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

- (a.) Review and analysis of all evaluation procedures, tests, records, and reports from the full and individual evaluation;
- (b.) Comparison of results of evaluation data with the eligibility criteria of the suspected disability to determine the presence of a disability or disabilities;
- (c.) Determination of whether sufficient information is available to make an eligibility determination;

- (d.) Specifying the influence of relevant determinant factors;
- (e.) Determining the adverse affect of the disability upon educational performance;
- (f.) Completion of the eligibility report(s) to document the ARC decisions; and
- (g.) If eligibility is confirmed, discussion of the development of the IEP.

### **3. Sources of Information.**

In making eligibility determinations, the OCS will 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 observation.

*707 KAR 1:310 Section 1(3); 34 CFR 300.306 (c)(1)(i)*

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

*707 KAR 1:310 Section 1(4); 34 CFR 300.306 (c)(1)(ii)*

### **4. Determinant (Exclusionary) Factors.**

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

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

*707 KAR 1:310 Section 1(2); 34 CFR 300.306 (b)*

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

### **5. Determining Adverse Affect.**

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

*707 KAR 1:280 Section 1(2); 34 CFR 300.8*

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

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

## **6. Eligibility Decision.**

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

*707 KAR 1:310 Section 1(6); 34 CFR 300.306 (c)(2)*

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

## **B. ELIGIBILITY REQUIREMENTS FOR EACH DISABILITY AREA**

### **1. Autism.**

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

(a.) Significant deficits in developing verbal and non-verbal communication systems for receptive, expressive, or pragmatic language (e.g., eye-to-eye gaze, facial expression, body postures, stereo-typed and repetitive use of language, idiosyncratic language).

(b.) Significant deficits in social interaction (participation) including social cues, emotional expression, personal relationships, and reciprocal (contributing) interaction (e.g., lack of showing/bringing or pointing out objects of interest, lack of varied spontaneous make-believe play, social imitative play at the developmental level).

(c.) Repetitive ritualistic behavioral patterns including insistence on following routines and a persistent pre-occupation and/or attachment to objects which could include stereo-typed and repetitive motor mannerisms.

(d.) Abnormal responses to environmental stimuli.

(e.) The child's educational performance is not adversely affected primarily because the child has an emotional-behavior disability. *707 KAR 1:280 Section 1(5); KRS 157.200 (1)(m); 34 CFR 300.8 (c)(1)*

### **2. Deaf-Blindness.**

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

(a.) A visual impairment as follows:

(i) the visual acuity with prescribed lenses is 20/70 or worse in the better eye; or

(ii) the visual acuity is better than 20/70, and the child has one (1) of the following conditions:

(a) a medically diagnosed progressive loss of vision;

(b) a visual field of 20 degrees or worse;

(c) a medically diagnosed condition of cortical blindness; or

(d) a functional vision loss.

(iii) the child requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration.

(b.) A hearing loss as follows:

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

(ii) an average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or

(iii) an average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear; and

(a) Deficits exist in processing linguistic information through hearing, with or without amplification.

(b) The hearing impairment adversely affects the educational performance of the child.

(c) The child is not be determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

(c.) Such severe communication, developmental, and learning needs that the child cannot benefit from programs designed solely for children with visual impairments or hearing impairments.

*707 KAR 1:002 Section 1(21); KRS 157.200 (1)(i); 34 CFR 300.8 (c)(2)*

### **3. Developmental Delay.**

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

(a.) The child is between three (3) and eight (8) years of age;

(b.) The child has not acquired skills or achieved commensurate with recognized performance expectations for his or her age in one or more of the following developmental areas:

- (i) cognition;
- (ii) communication;
- (iii) motor development;
- (iv) social-emotional development; or
- (v) self-help or adaptive behavior.

(c.) The child demonstrates a measurable, verifiable discrepancy between expected performance for the child’s chronological age and the current level of performance. This discrepancy will be documented by:

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

*707 KAR 1: Section 1(22); KRS 157.200 (1)(k); 34 CFR 300.8 (b)*

### **4. Emotional-Behavioral Disability.**

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

(a.) When compared to child’s peers/cultural reference groups, the child continues to exhibit severe deficits in social competence or academic performance:

- (i) across settings;
- (ii) over a long period of time;
- (iii) to a marked degree; and
- (iv) after appropriate academic and behavioral interventions have proven ineffective.

(b.) If any deficit in social competence is identified, then the deficit is to the extent that it impairs personal relationships with peers or adults and it is clearly indicated that the behavior deviates from the standards for the appropriate peer and cultural reference groups.

(c.) Severe deficits in academic performance not commensurate with the student’s ability level and not solely a result of intellectual, sensory or other health factors but are related to the child’s social-emotional problem.

- (d.) A general pervasive mood of unhappiness or depression.
- (e.) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (f.) This severe deficit in social competence, appropriate behavior, and academic performance is not the result of isolated (not necessarily one) inappropriate behaviors that are the result of willful, intentional, or wanton actions. *707 KAR 1:002 Section 1(24); KRS 157.200 (1)(g); 34 CFR 300.8 (c)(4)*

**5. Hearing Impairment.**

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

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

**6. Mental Disability.**

In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate. *707 KAR 1:310 Section 1(5)*

- (a.) The ARC will determine that the child has a “mild mental disability” as defined if evaluation information verifies:
  - (i) cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean.
  - (ii) adaptive behavior deficit is at least two (2) standard deviations below the mean.
  - (iii) a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.
  - (iv) is typically manifested during the developmental period

(b.) The ARC determines that the child has a “functional mental disability” as defined if evaluation information verifies:

- (i) cognitive functioning is at least three (3) or more standard deviations below the mean.
- (ii) adaptive behavior deficits are at least three (3) or more standard deviations below the mean.
- (iii) a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.
- (iv) is typically manifested during the developmental period.

*707 KAR 1:002 Section 1(37); KRS 157.200 (1)(e); 34 CFR 300.8 (c)(6)*

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

### **7. Multiple Disabilities.**

The ARC will determine that the child has “multiple disabilities” as defined if evaluation information verifies: (a.) The student has a combination of two (2) or more of the following disabilities according to the criteria in these procedures:

- (i) Autism
- (ii) Emotional-behavioral disability
- (iii) Hearing impairment
- (iv) Mental disability
- (v) Other health impaired
- (vi) Physical or orthopedic disability
- (vii) Specific learning disability
- (viii) Traumatic brain injury
- (ix) Visual impairment

(b.) The multiple disabilities adversely affect the educational performance of the child to the extent that educational needs cannot be accommodated through special education programs solely for one impairment.

*707 KAR 1:002 Section 1(39); 34 CFR 300.8 (c)(7)*

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

*KRS 157.200 (1)(h)*

### **8. Orthopedic Impairment.**

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

(a.) The existence of one or more of the following:

- (i) a severe orthopedic or physical impairment of bone or muscle caused by congenital anomaly, disease, injury, or accident;
- (ii) an impairment caused by disease;
- (iii) an impairment from other causes such as cerebral palsy, amputations, fractures, burns that cause contractures.

*707 KAR 1:002 Section 1(41); 34 CFR 300.8 (c)(8); KRS 157.200 (1)(a)*

(b.) The ARC may determine that an educationally relevant medical evaluation completed by a licensed physician is needed to verify:

- (i) the existence of a severe orthopedic or physical impairment caused by congenital anomaly, disease, injury, or accident;

- (ii) the diagnosis and nature of the impairment; and
- (iii) any limitations resulting from the impairment.

### **9. Other Health Impairment.**

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

- (i) the existence of a severe health impairment caused by chronic or acute health problems as diagnosed by a licensed medical professional or qualified mental health professional.
- (ii) the diagnosis and nature of the health impairment.
- (iii) the effect of the impairment resulting in:
  - (a) limited strength (maintenance and endurance of fine and gross motor skills and activities); OR
  - (b) limited vitality (endurance in an activity e.g. duration, intensity, and frequency over time); or
  - (x) limited alertness (maintenance of focus on tasks, short attention span; highly distractible). *707 KAR 1:002 Section 1(42); KRS 157.200 (1)(b); 34 CFR 300.8 (c)(9)*

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

- (i) the existence of a severe health impairment caused by chronic or acute health problems;
- (ii) the diagnosis and nature of the health impairment; and
- (iii) the effect of the impairment on the vitality, strength, or alertness, including a heightened alertness to environmental stimuli, on the child.

### **10. Speech or Language Impairment.**

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

(a.) The student has a disorder in one or more of the following:

- (i) fluency
- (ii) speech sound production
- (iii) language
- (iv) voice

*707 KAR 1 Section 1(60); KRS 157.200 (1)(c); 34 CFR 300.7 (c)(11)*

(b.) **SPEECH AS A RELATED SERVICE:** Speech and language services may be provided as a related service, required for the implementation of the IEP. If speech is a related service, the ARC will complete a determination of eligibility for speech or language impairment. The ARC determines whether speech or language as a related service is required to assist the child to benefit from special education.

### **11. Traumatic Brain Injury.**

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

(a.) The existence of a traumatic brain injury and the diagnosis and extent of injury, including the possible effect on educational performance.

(b.) Educationally relevant evaluation data verifies impairment in at least one or more of the identified areas.

(c.) Brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not considered a traumatic brain injury in accordance with this definition.

*707 KAR 1:002 Section 1(63); KRS 157.200 (1)(l); 34 CFR 300.8 (c)(12)*

(d.) For initial eligibility, the ARC requires an educationally relevant medical evaluation. For reevaluation, the ARC may determine if the medical statement is required. The educationally relevant medical evaluation must be completed by a licensed medical professional and verifies the:

- (i) existence of a traumatic brain injury caused by chronic or acute health problems;
- (ii) diagnosis and extent of the brain injury; and
- (iii) possible affect of the impairment on educational performance.

## **12. Visual Impairment.**

Visually disabled means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils. *KRS 157.200 (1)(j)* The ARC may determine that a child has the disability of “visual impairment” if evaluation data verifies:

- (a.) the visual acuity with prescribed lenses is 20/70 or worse in the better eye; or
- (b.) the visual acuity is better than 20/70, and the child has one (1) of the following conditions:
  - (i) a medically diagnosed progressive loss of vision;
  - (ii) a visual field of 20 degrees or worse;
  - (iii) a medically diagnosed condition of cortical blindness; or
  - (iv) a functional vision loss.
- (c.) the child requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration. *707 KAR 1:002 Section 1(65); 34 CFR 300.8 (c)(13)*

## **13. Evaluation/Eligibility Procedures for Children with Specific Learning Disabilities.**

(a.) Specific means a disorder in one or more of the psychological processes primarily involved in understanding or using spoken or written language which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical abilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. The term does not include a learning problem that is the direct result of: (i) a hearing impairment; (ii) visual, physical, mental, or emotional-behavioral disabilities; or (iii) environmental, cultural, or economic differences.

*KRS 157.200 (1)(f); 707 KAR 1:002 Section 1(59); 34 CFR 300.8 (c)(10) 707 KAR 1:310 Section 2(4); 34 CFR 300.309 (a)(3)*

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

- (i) conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, or social-emotional development;
- (ii) interpret assessment and intervention data and apply critical analysis to that data;
- (iii) develop appropriate educational and transitional recommendations based on the assessment data; and
- (iv) deliver and monitor specially designed instruction and services to meet the needs of a child with a specific learning disability. *707 KAR 1:310 Section 2(1); 34 CFR 300.308 (b)*

(c.) **REQUIRED DATA.** For a child suspected of having a specific learning disability, the ARC must consider, as part of the evaluation, data that demonstrates that: (i) 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

(ii) 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.

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

(d.) **ELIGIBILITY DETERMINATION.** The ARC may determine a child has a specific learning disability if:

(i) the child is provided with learning experiences and instruction appropriate for the child's age or state-approved grade level standards aligned with the Kentucky Program of Studies, *704 KAR 3:303*; and

(ii) the child does not achieve adequately for the child's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:

- a. oral expression;
- b. listening comprehension;
- c. written expression;
- d. basic reading skills;
- e. reading fluency skills;
- f. reading comprehension;
- g. mathematics calculation; or
- h. mathematics reasoning.

(iii) the child fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies, *704 KAR 3:303* in one or more of the areas identified in *707 KAR 1:310 Section 2 (3)* when assessed based on the child's response to scientific, research-based intervention; or

(iv) 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. 707 KAR 1:310 Section 2(3); 34 CFR 300.309 (a)(1)*

(iv) The term does not include a learning problem that is the direct result of: (i) a hearing impairment; (ii) visual, physical, mental, or emotional-behavioral disabilities; or (iii) environmental, cultural, or economic differences.

*KRS 157.200 (1)(f); 707 KAR 1:280 Section 1(59); 34 CFR 300.8 (c)(10) 707 KAR 1:310 Section 2(4); 34 CFR 300.309 (a)(3)*

(e.) **APTITUDE/ACHIEVEMENT DISCREPANCY.** The OCS uses the aptitude/achievement discrepancy tables in the "Kentucky Learning Disability Guidelines, 1993", updated, to determine eligibility for a specific learning disability; the ARC may also use additional intervention data gathered.

(f.) **WRITTEN DOCUMENTATION OF A SPECIFIC LEARNING DISABILITY.**

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

- (a) whether the child has a specific learning disability;
- (b) the basis for making that determination;
- (c) the relevant behavior noted during the observation;
- (d) the relationship of that behavior to the child's academic functioning;
- (e) the educationally relevant medical findings, if any;
- (f) whether the child does not achieve commensurate with the child's age and ability;
- (g) whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual

development in one (1) or more of the areas described in 707 KAR 1:310 Section 2 (3), 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.

*707 KAR 1:310 Section 2(8); 34 CFR 300.311 (a) (1-6)*

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

(a) the amount and nature of student performance data that is collected and the general education services that are provided;

(b) strategies for increasing the child's rate of learning; and

(c) the parents' right to request an evaluation.

*707 KAR 1:310 Section 2(9); 34 CFR 300.311 (a)(7)*

(iii) 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.

*707 KAR 1:310 Section 2(10); 34 CFR 300.311 (b)*

## INDIVIDUAL EDUCATION PROGRAM - 4090.08-AR

### A. RESPONSIBILITY FOR SERVICES

**1. Students Eligible for Development of an IEP.** (a.) OCS will ensure that an IEP is in place at the beginning of each school year for every student with a disability who is age three (3) to twenty-one (21) years old and is eligible for special education and related services. This includes students enrolled in the OCS, students who are placed by the OCS in a private school, and parentally-placed students attending private school within the OCS district (see “Private School” *infra*).

*707 KAR 1:320 Sections 1(1), (3), (7); 34 CFR 300.323 (a),(b); 34 CFR 300.325 (a)*

(b.) The ARC members do **not** develop an IEP when a child: (i) has been evaluated and the ARC has determined that the child does **not** meet eligibility for a disability under IDEA; (ii) has a disability, but that disability does not adversely affect the educational performance of the child; or (iii) has an IEP, developed within the last 12 months, that meets the needs of the child.

**2. Timing of IEP Development and Implementation.** The OCS will ensure the IEP:

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

(b.) is implemented as soon as possible following an ARC meeting. “As soon as possible following an ARC meeting” allows for delays in implementation that include:

(i) meetings held during summer break;

(ii) developing an IEP for a child who is not yet three (3) years of age;

(iii) circumstances that require a short delay (e.g., working out transportation arrangements, within the next grading period or other natural break in school instruction); or

(iv) awaiting parent consent for the initial provision of services.

*707 KAR 1:320 Section 1(4); 34 CFR 300.323 (c)*

(c.) The OCS will ensure that there is no delay in implementing a child’s IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

*707 KAR 1:320 Section 1(5); 34 CFR 300.103 (c)*

**3. IEP Accessibility.** The OCS will ensure that; (a) the child’s IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;

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

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

*707 KAR 1:320 Section 1(6); 34 CFR 300.323 (d) (1-2)*

**4. IEP Format.** (a.) Each ARC will use the standard form provided by the OCS for recording the content of the IEP.

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

*34 CFR Part 300 Appendix A, Q.32*

## **B. PRESCHOOL TRANSITION**

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

*707 KAR 1:300 Section 1(2-3); 34 CFR 300.321 (f); 707 KAR 1:320 Section 1 (7); 34 CFR 300.323 (b).34 CFR 300.101 (b)*

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

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

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

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

- (i) when the child will be referred to OCS;
- (ii) when the parent will register the child to attend OCS;
- (iii) when the service provider will transmit child evaluation data to OCS;
- (iv) the timeframe for the ARC meeting to determine if evaluation information is adequate and if the child is eligible for special education and related services; and
- (v) how the early intervention service provider will assist in making the transition from the early intervention program to OCS.

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

(f.) If the parent of a preschool age child chooses to pursue services, OCS arranges an ARC meeting according to OCS procedures governing Notice (PROCEDURAL SAFEGUARDS 4090.04-AR) and ARC meetings (INDIVIDUAL EDUCATION PROGRAM 4090.08-AR).

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

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

## C. CONDUCTING AN ARC MEETING

### 1. Review of Procedural Safeguards with Parent.

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

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

### 2. Reaching ARC Consensus/Dissenting Members.

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

(b.) DISSENT REGARDING INITIAL IEP. (i) If the parent and OCBE personnel cannot reach consensus or negotiate a compromise on a component of an initial IEP, the ARC Chairperson will document the disagreement. The ARC Chairperson will state the district's position and document the position on the Conference Summary. The ARC Chairperson will remind the parent of the right of the parent and the district to resolve differences through mediation or due process procedures.

(ii) If any ARC member, other than the parent, disagrees with any part of the proposed IEP, the dissenting member(s) may attach a written statement to the Conference Summary giving the reasons for disagreement. The ARC Chairperson will state the district's position and document the position in the Conference Summary.

(iii) If the ARC does not complete the IEP at the meeting when initial eligibility is determined, the ARC members will schedule a convenient date and time to continue the meeting to complete the IEP. A reconvened meeting will be held within the 60 school day timeline.

(c.) DISSENT REGARDING EXISTING IEP. If the parent and OCS personnel cannot reach consensus on a component while reviewing or revising an IEP:

(i) The ARC may develop an interim course of action in terms of services to which both parties can agree;

(ii) The ARC Chairperson will advise the parent of the right to resolve differences through due process procedures; and

(iii) The summary recorder will summarize the points of disagreement and the interim course of action in the Conference Summary.

(iv) If the ARC cannot reach consensus on an interim measure, the last agreed upon IEP will remain in effect until the disagreement is resolved. The ARC will reconvene at an agreed upon time and date unless mediation or a due process hearing is requested or a complaint is filed.

(v) If the ARC members do not complete review and revision of the IEP, this will be documented on the Conference Summary and the ARC will schedule another meeting at an agreed upon date and time, prior to the annual review date.

(v) If mediation or a due process hearing is initiated OCS will not change the IEP or placement of the child unless the parent and OCS agree.

### **3. Informal Meetings Outside ARC.**

Prior to the ARC meeting to discuss the IEP, teachers, related services providers, and the school psychologist may meet to gather and review existing data collected about the child and make recommendations to the ARC.

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

## **D. DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM**

### **1. IEP Considerations and Content.**

(a.) The ARC will consider in the development of an IEP:

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

*707 KAR 1:320 Section 5(1); 34 CFR 300.324 (a)(1)*

(b.) Development, review, and revision of the IEP includes:

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

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

*707 KAR 1:320 Section 5(6); 34 CFR 300.320(d)(2).*

### **2. Identifying Information Regarding the Child.**

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

- (i.) name (first, middle and last name of child);
- (ii) date of birth (month, day, and year);
- (iii) identification number;
- (iv) school implementing IEP
- (v) home school (school the child would attend if enrolled in school and not disabled);
- (vi) grade level; and
- (vii. date IEP completed (when ARC members agree all components of the IEP are complete).

### **3. Present Levels of Achievement.**

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

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

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

- (i) using student performance data (state wide assessment information), evaluation information, and ongoing progress data;
- (ii) reviewing curriculum documents to determine the child's performance within the curriculum;
- (iii) indicating the areas in which the student is performing commensurate with peers;
- (iv) determining how the child's disability affects involvement and progress in the Kentucky POS;
- (v) determining the child's unique needs to prepare the child for further education, employment, and independent living.

**4. Developing Measurable Annual Goals, Including Benchmarks and/or Objectives.**

(a.) The IEP for each child shall include 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 curriculum as provided in the Kentucky Program of Studies, 707 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities; and
- (ii) meet the child's other educational needs that result from the disability.

*707 KAR 1:320 Section 5 (7) (b); 34 CFR 300.320 (a) (2)*

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

- (i) the Kentucky Program of Studies
- (ii) OCS graduation requirements, when relevant and appropriate
- (iii) student strengths and interests
- (iv) the amount of time left in school
- (v) behaviors that appear most modifiable
- (vi) parent, teacher, and student concerns
- (vii) skills needed to make progress towards the student's postsecondary goal(s)

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

(d.) CROSS REFERENCE WITH POSTSECONDARY GOALS: While "a statement of measurable annual goals" (IDEA 2004, Part B, 614, [d][1][A][i][II]) is a required part of a student's IEP, there does not need to be a separate annual goal for each postsecondary goal. The team should ask "what postsecondary goal(s) does this annual IEP goal support?" *NSTTAC Indicator 13 Checklist FAQ; (Approved by OSEP 11/20/06)*

**5. Methods of Measurement.**

The IEP will include a statement of how the child's progress toward meeting the annual goals will be measured, as determined by the ARC. *707 KAR 1:320 Section 5(13)(a); 34 CFR 300.320(a)(3)(i).*

**6. Consideration of Special Factors.**

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

(b.) An ARC shall:

- (i) in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies and supports, to address that behavior;
- (ii) 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;
- (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- (iv) consider the communication needs of the child;
- (v) 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
- (vi) consider whether the child requires assistive technology.

(c.) All these factors shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.

*707 KAR 1:320 Section 5(2-3); 34 CFR 300.324 (a)(2);  
See also KRS 158.282, Instruction of all blind students in the use of Braille.*

(d.) Once the ARC has considered all of these factors, the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).

*707 KAR 1:320 Section 5(4); 34 CFR 300.324 (a)(2)*

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

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

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

- (i) advance appropriately toward attaining the annual goals;
- (ii) be involved and make progress in the general curriculum;
- (iii) participate in extracurricular and other nonacademic activities; and
- (iv.) be educated and participate with other children with or without disabilities.

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

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

(d.) SPECIALLY DESIGNED INSTRUCTION.

- (i) Specially-designed instruction means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general curriculum included in the Program of Studies. The ARC determines the appropriate adaptations needed in the content, methodology, or delivery of instruction to ensure access of the child to the general curriculum. *707 KAR 1:280 Section 1(58)*
- (ii) Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, if required to assist a child with a disability to benefit from special education. *707 KAR 1:320 Section 7(3); 34 CFR 300.43 (b)*

(e.) SUPPLEMENTARY AIDS AND SERVICES. The ARC determines which supplementary aids and services and other supports that are provided in regular education classes or other education-related settings to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 707 KAR 1:350. *707 KAR 1:280 Section 1(61)*

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

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

- (ii.) OCS will include children with disabilities in the state-wide assessment as provided in 703 KAR Chapter 5. *707 KAR 1:320 Section 9(2); 34 CFR 300.320 (a)(6)(i)*
- (iii.) If the ARC determines that the child meets the criteria for participation in the alternate portfolio, as provided in 703 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision. *707 KAR 1:320 Section 5(11); 34 CFR 300.320(a)(6)(ii)*

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

- (a.) relate directly to the specially designed instruction needed for the student to make progress toward annual goals;
  - (b.) are required for the child to benefit from special education;
  - (c.) facilitate access to public school; and
  - (d.) promote education and participation with other students, with or without disabilities.
- (ii) Related services means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.

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

(iv) "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.

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

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

*707 KAR 1:280 Section 1(51)*

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

(h.) **SUPPORTS FOR SCHOOL PERSONNEL AND PROGRAM MODIFICATIONS.** The ARC determines and documents the supports for school personnel necessary to implement the child's IEP which may include specialized training or the use of school staff. The ARC determines and documents the program modifications necessary to implement the child's IEP which may include individualized selection of related arts or elective classes.

(i.) **ASSISTIVE TECHNOLOGY SERVICES AND DEVICES.** (a.) The OCS will ensure that assistive technology devices or assistive technology services, or both as defined in 707 KAR 1:280(3) or (4) are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services.

*707 KAR 1:290 Section 7(1); 34 CFR 300.105(a)*

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

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

## **8. Beginning Dates, Duration, Frequency, and Location of Services.**

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

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

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

*1997 IDEA; 34 CFR Part 300 Appendix A, Q. 35*

## **9. Participation in the General Education Program.**

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

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

## **10. Physical Education.**

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

- (i) physical education services, specially designed if prescribed in the child's IEP; or
- (ii) the opportunity to participate in the regular physical education program available to children without disabilities.

(b.) The OCS will not be required to make available physical education services to a child with a disability if:

- (i) 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
- (ii) the OCS enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

*707 KAR 1:290 Section 6 (1-2); 34 CFR 300.108*

## **11. Reports to Parents.**

An IEP will include a statement of when periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided. *707 KAR 1:320 Section 5(13)(b); 34 CFR 300.320(a)(3)(ii)*

## **12. Review Date.**

The OCS will ensure that the ARC: (a.) reviews each child's IEP periodically, but no less than annually, to determine whether annual goals are being achieved; and (b.) revises the IEP in accordance with 34 CFR 300.324(b)(1)(ii). *707 KAR 1:320 Section 2(6); 34 CFR 300.324(a)(1)*

## **13. Transition for Students in 8<sup>th</sup> Grade or Age 14 Years.**

(a.) In the child's eighth-grade year or when the child has reached the age of fourteen (14) years, and in alignment with the child's Individual Learning Plan (as required by 704 KAR 3:305), or earlier if determined appropriate by the ARC, the IEP for a child with a disability will include a statement of the transition service needs of the child under the applicable components of the child's IEP that focus on the child's course of study. This statement will be updated annually. *707 KAR 1:320 Section 7(1)*

(b.) Transition Services means a coordinated set of activities for a child with a disability that:

- (i.) 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;
- (ii.) is based on the individual student's needs, taking into account the child's preferences and interests; and
- (iii.) includes:
  - (a) instruction;
  - (b) related services;
  - (c) community experiences;
  - (d) the development of employment and other post-school adult living objectives; and
  - (e) if appropriate, acquisition of daily living skills and functional vocational evaluation.

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

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

**14. Transition Planning for Post-secondary Goals (by the child's 16<sup>th</sup> birthday).**

(a.) By the child's 16<sup>th</sup> birthday, the IEP shall include:

- (i.) appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment and where appropriate, independent living skills; and
- (ii.) the transition services (including the course of study) needed to assist the child in reaching these goals. *707 KAR 1:320 Section 7(2); 34 CFR 300.320 (b)*

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

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

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

**15. Coordination with Individual Learning Plan.**

(a.) Beginning with the graduating class of 2012, each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the program of studies. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. *704 KAR 3:305 (2)*

(b.) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations. *704 KAR 3:305 (4)*

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

**16. Inclusion of Other Agencies in Transition Planning.**

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

- (i) the agency that may be responsible;
- (ii) the responsibilities of each agency, linkages, or both; and

(iii) a description of the transition services to be provided.

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

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

(d.) If an agency, other than the OCS, fails to provide the transition services described in the IEP, the OCS shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP. *707 KAR 1:320 Section 7(4); 34 CFR 300.324 (c)(1)*

(e.) 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. *707 KAR 1:320 Section 7(5); 34 CFR 300.324 (c)(2)*

(f.) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. *707 KAR 1:320 Section 3(4); KRS 160.720 (1); 34 CFR 300.321 (b)(3); 34 CFR 300.622 (b) (2)*

### **17. Student Attaining the age of Majority.**

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

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

## **E. IEP COMPLETED.**

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

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

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

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

## **F. EXTENDED SCHOOL YEAR.**

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

**2. Need for ESY.** The OCS provides extended school year services to each child with a disability, regardless of the nature or severity of the disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis. In making this determination, the OCS will not: (i) limit the provision of extended year services to a particular category(s) of disability; or (ii) unilaterally limit the type, amount, or duration of those services.

*707 KAR 1:290 Section 8; 34 CFR 300.106*

(a.) Procedure for Determining Need for ESY Services.

- (i) In the last four to five weeks prior to the summer break, the IEP Implementer will collect the student's progress data on only the IEP benchmarks/objectives currently being instructed. The data will indicate student performance and trends. Data will be collected according to the methods for measuring student progress identified on the IEP. The IEP Implementer may provide supportive information including narrative comments, observations, and specific samples of student work. No single criterion will be used to determine student performance on an IEP benchmark/objective.
- (ii) Within the first eight weeks of school following summer break, student performance will be measured on the same benchmarks/objective using the same methods of evaluation (e.g., similar or identical prompts, portfolio entries, daily assignments, open response question, teacher made test, oral drill, performance task). The date on student work samples will be recorded (month, day and year).
- (iii) Within the first eight weeks of school, the benchmarks/objectives where the student does not recoup performance will be taught again and student performance will be re-measured according to the methods of evaluation specified on the IEP until student performance is equal to the performance when the lapse in instruction began.
- (iv) Based on the records of student performance, student progress data/trends 4-5 weeks prior to summer break will be compared with student performance during weeks 1-8 following the summer break.

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

(c.) SUMMER-TO-FALL REGRESSION RECOUPMENT DATA NOT AVAILABLE. If summer-to-fall regression recoupment data is not available at the time of the child's IEP annual review, the ARC will apply similar ESY activities to an OCS scheduled school break: fall, December, or spring break. If there have been no breaks in instruction, or analysis of the data fails to validate assessment of recoupment, the IEP implementers will submit the following information to determine the need for extended year services: 1.) tests and observation data collected over a period of time; and 2.) the opinion of one or more professionals.

**3. Provision of ESY Services.** The ARC will determine the type and amount of services needed to instruct the specific benchmarks/objectives in which the student demonstrated regression and limited recoupment

and not for the full services documented on the IEP. The ARC Chairperson, in consultation with the Director, will make arrangements for the student to receive ESY services according to the ARC decision.

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

**5. Consideration of ESY Services for Children Transitioning From 0 to 3 Programs.** (a.) In the case of a child transitioning from FIRST STEPS (Kentucky’s Early Intervention System) or from other early intervention programs, the ARC will examine the child’s current levels of skills on the IEP (which are carried over from the Individual Family Service Plan (IFSP)). The service providers or infant-toddler program the child is coming from will have records on the child’s progress on IFSP skills. If records of progress are not available, the ARC secures a statement of progress from the service providers. The criterion for determining for ESY services for the three-year old is the same as the criteria for all children and youth with disabilities.

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

**PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT - 4090.09-AR**

**A. ARC DETERMINATION OF PLACEMENT.**

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

*707 KAR 1:350 Section 1(6); 34 CFR 300.116 (b)*

**1. Making a Placement Decision.**

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

*707 KAR 1:350 Section 1(5); 34 CFR 300.116 (a)(2).*

(b.) The OCS will ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum shall include the alternative placements of instruction in which will be considered in the following order:

- (i.) regular classes;
- (ii.) special classes;
- (iii.) special schools;
- (iv.) home instruction; and
- (v.) hospitals and institutions.

*707 KAR 1:350 Section 1(2-3); 34 CFR 300.115 (a), (b)(1)*

<b>Placement Option</b>	<b>Description of Placement</b>
Full time General Education	Participation <i>only</i> in the general education classroom/environment. This may include general education with supplementary aids and services, and/or general education with specially designed instruction, which may include collaboration.
Part time General Education Part time Special Education	Participation in <i>both</i> general and special education classroom/environments. This is for <i>any</i> time the student is pulled out of general education, regardless of the amount of time.
Full time Special Education	Participation <i>only</i> in the special education classroom. This includes a school environment where the student participates only with students with disabilities.

(c.) The OCS will make provision for supplementary services to be provided in conjunction with regular class placement.

*707 KAR 1:350 Section 1(4); 34 CFR 300.115 (b)(2)*

(d.) The ARC will make placement decisions based on each child's individual abilities and needs, and not solely on factors such as:

- (i.) the category of disability of the child;
- (ii.) availability of special education and related services;
- (iii.) configuration of the service delivery system;
- (iv.) availability of space; or
- (v.) administrative convenience.

(e.) PLACEMENT FOR CHILDREN WITH AUTISM, DEAF-BLINDNESS AND DEVELOPMENTAL DELAY. 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. *707 KAR 1:350 Section 2(3)*

## **2. Consideration of School the Child Would Attend if not Disabled.**

Unless the IEP of a child with a disability requires some other arrangement, the child will be educated in the school that he or she would attend if nondisabled. If the IEP cannot be implemented in that school or facility, the ARC will select a similar level school or location that has the placement alternative determined by the ARC. *707 KAR 1:350 Section 1(7); 34 CFR 300.116 (c)*

## **3. Modifications to the General Education Environment.**

(a.) A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

*707 KAR 1:350 Section 1(9); 34 CFR 300.116(e)*

(b.) The ARC will specify on the Conference Summary Action Notice any needed changes in the general education environment to implement the IEP. Changes may include:

- (i.) changing the physical environment (e.g., preferential seating, special lighting);
- (ii.) using supplementary aids and services (e.g., large print books);
- (iii.) using different modes of instruction (cooperative learning, modeling, behavioral instruction);
- (vi.) changing the student's sequence of activities; or
- (v.) training personnel (e.g., special instruction techniques, positive behavior interventions, strategies, etc.).

## **4. Participation in Academic, Nonacademic, and Extracurricular Activities with Children Who Are Not Disabled.**

(a.) The OCS will ensure that to the maximum extent appropriate that children with disabilities, including children placed by the OCS in public or private institutions or other care facilities, are educated with children who are nondisabled. The OCS will 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.

*707 KAR 1:350 Section 1(1); 34 CFR 300.117*

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

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

(c.) In providing or arranging for the provision of nonacademic and extracurricular services and activities, the OCS will ensure that a child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of the child.

*707 KAR 1:350 Section 1(10); 34 CFR 300.117*

(d.) The OCS will 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 which give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include: counseling services; athletics; transportation; health services; recreational activities; special interest groups or clubs sponsored

by the OCS; referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the OCS and assistance in making outside employment available. *707 KAR 1:290 Section 5; 34 CFR 300.107 (b)*

(e.) The OCS ensures that all children, including children with disabilities, meet the established criteria and eligibility requirements for participation in nonacademic, and extracurricular activities.

## **5. Harmful Effects.**

(a.) In selecting the least restrictive environment, consideration will be given to any potential harmful effects on the child or on the quality of services that he needs.

*707 KAR 1:350 Section 1(8); 34 CFR 300.116(d).*

(b.) The ARC uses a variety of data such as written results of previous interventions, teacher observations, evaluation information, IEP present level of performance, environmental influences, ongoing progress data, and medical information to identify:

- (i) factors in the placement alternative which may keep the child from making progress in the general curriculum;
- (ii) behaviors which may significantly interfere with other children making progress in the general curriculum; and
- (iii) other factors in the placement alternative that may adversely affect the quality of services needed by the child.

(c.) The ARC will determine the modifications necessary to address the harmful effects identified in the placement alternative. If modifications would be inappropriate, the ARC selects another placement alternative and repeats the process for addressing potential harmful effects.

## **B. ARC PLACEMENT IN ANOTHER PUBLIC SCHOOL, PRIVATE SCHOOL, OR FACILITY**

The OCS will 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 the OCS.

*707 KAR 1:290 Section 1(2); 34 CFR 300.146 (b-c)*

If the decision of the ARC requires a placement in another public school, private school or facility, or a location other than an OCS school or facility, the ARC Chairperson contacts the Director and requests the Director attend an ARC meeting for the consideration of placement alternatives.

Prior to the ARC meeting, the Director contacts programs that provide the type of services specified on the IEP. The Director inquires regarding:

1. the possible referral of the child to the program; and
2. the agency's or organization's willingness to provide the services specified by the IEP.

When the Director identifies a program that provides the type of services specified on the IEP, the Director schedules an ARC meeting to address the referral and placement of the child to the school program.

**1. Placement in Private Schools or Facilities.** (a.) Prior to placing a child with a disability in, or referring a child to, a private school or facility, the OCS will initiate and conduct an ARC meeting to develop an IEP for the child. *707 KAR 1:320 Section 8(1); 34 CFR 300.325(a)(1)*

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

(c.) 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 OCS.

707 KAR 1:320 Section 8(3); 34 CFR 300.325(b)

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

707 KAR 1:320 Section 8 (4); 34 CFR 300.325(b) & (c)

**2. Residential Placement.** (a.) 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, will be provided by the OCS. The OCS may fulfill its responsibility under this section by providing the services directly or by contracting for those services.

707 KAR 1:290 Section 2; 34 CFR 300.104

(b.) The ARC determines the placement.

**3. Placement at Kentucky School for the Blind (KSB) or Kentucky School for the Deaf (KSD).** (a.) Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident school district, will ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC of that school district.

707 KAR 1:320 Section 1(2)

(b.) The ARC may consider placement of a child with a visual impairment at the Kentucky School for the Blind (KSB) and placement of a child with a hearing impairment at the Kentucky School for the Deaf (KSD). The ARC members determine placement.

(c.) If the ARC determines placement is needed at KSB or KSD to provide the student FAPE, the ARC Chairperson will contact the Director and request that the Director attend an ARC meeting for the consideration of placement alternatives.

(d.) **TRANSPORTATION TO KSB OR KSD.** (i) If a child of school age is admitted for resident instruction at the Kentucky School for the Deaf (KSD) or the Kentucky School for the Blind (KSB), the district in which the child resides shall provide transportation to and from the school on a regularly scheduled basis, at weekly intervals while the child is enrolled, either by individual district or in cooperation with other school districts on a regional basis. Students who live more than two hundred (200) miles from the school they attend are not required to go home more than twice each month.

KRS 157.280 (4)

(ii) If a child of school age is admitted as a day school pupil for instruction at KSB or KSD, the district in which the child resides may provide transportation to and from the school on a daily basis, either by individual district or in cooperation with other school districts on a regional basis. School districts providing this transportation will be reimbursed from the transportation fund of the foundation program at the same rate per trip as that which is calculated under subsection (4) of KRS 157.280.

(iii) The Director, in consultation with the Director of Transportation, will make arrangements for regional transportation planning when feasible and obtain approval from the State Board of Education according to procedures provided by the Kentucky Department of Education (KDE).

**4. Other State Agencies Responsible for Education.** (a.) 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. *707 KAR 1:290 Section 1(3); 34 CFR 300.118*

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

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

(a.) If the OCS places or refers a child with a disability to a private school, the OCS will ensure that the child:

- (i.) is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;
- (ii.) is provided an education that meets the standards of the OCS including general curriculum standards;
- (iii.) has all the rights of any child with a disability served by the OCS.

*707 KAR 1:320 Section 8(5); 34 CFR 300.146*

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

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

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

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

**6. Transportation.** If the OCS, through an ARC, determines that a child requires placement in a special education program operated by another county or independent district or private organization, the resident local school district will assume responsibility for the payment of the costs incurred in educating the child. The school board of the school district in which any child resides will pay for his or her transportation to and from the program in the other school district or the private organization. However, if the school board of the other district or the private organization providing the program also provides transportation, the cost of transportation shall be included in the total cost. *KRS 157.280(2)*

**7. Attendance.** If a local school district, under the provisions of KRS 157.360(6) enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month. *702 KAR 7:125 Section 11*

**8. Payment for Services.** (a.) If the ARC determines that the child requires placement in a special education program operated by another county or independent district, parochial school, or a private school or facility, the OCS retains responsibility for payment of the costs incurred in educating the child.

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

### **C. CHANGE IN ELIGIBILITY FOR FAPE.**

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

#### **1. Release from Special Education and Related Services.**

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

(b.) The ARC determines that the child may be released when the child:

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

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

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

#### **2. Graduation with a Diploma.**

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

(b.) The OCS is not required to conduct an evaluation as described in 707 KAR 1:300 Section 4 before termination of a child's eligibility due to graduation from secondary school with a regular diploma.

*707 KAR 1:300 Section 4(20); 34 CFR 300.305 (e) (2)*

(c.) The OCS will provide each student who graduates or ages out of the program with a summary of the child's academic achievement and functional performance (i.e. "Summary of Performance") including recommendations on how to assist the child in meeting the child's postsecondary goals. The ARC Chairperson will assign an OCS staff member to prepare a Summary of Performance, in consultation with the student if possible, prior to the annual review preceding the student's expected graduation date.

*707 KAR 1:300 Section 4(21); 34 CFR 300.305 (e) (3)*

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

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

### **3. Completion of an Alternative Diploma Program** (formerly Certificate of Attainment).

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

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

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

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

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

(e.) If the student is eligible to receive an Alternative Diploma (formerly Certificate of Attainment), he or she may return to special education and related services until he or she obtains a regular diploma, ages out,

or is determined not to be a child with a disability.

**4. Exceeding the Age of Eligibility for FAPE.**

(a.) “Aging out” means the age of the student has exceeded the age limits for continuing eligibility to a free appropriate public education provided by the OCS. A child will age-out in the Oldham County Schools at the end of the semester in which the child attains the age of twenty-one (21) years.

(b.) The OCS is not be required to conduct an evaluation as described in 707 KAR 1:300 Section 4 before termination of a child’s eligibility due to...exceeding the age of eligibility for a free, appropriate public education. *707 KAR 1:300 Section 4(20); 34 CFR 300.305(e)(2)*

(c.) For students who...age out of the program, the OCS will provide the student with a summary of the student’s academic achievement and functional performance including recommendations on how to assist the student in meeting the student’s postsecondary goals. *707 KAR 1:300 Section 4(21); 34 CFR 300.305(e)(3)*

(d.) At a meeting prior to the students 21<sup>st</sup> birthday, which may be an annual review meeting, the ARC:  
(i) reviews the youth's progress in the current program;  
(ii) reviews, and revises if appropriate, the IEP and transition plan;  
(iii) determines the last date of services based on the youth's 21st birthday; and  
(iv) provides the student with a copy of the summary of performance including any documentation the student may need to assist in meeting postsecondary goals.

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

**5. Withdrawal Prior to Program Completion.**

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

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

**D. SHORTENED SCHOOL DAY OR WEEK**

The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age who is enrolled and in regular attendance in a state-supported program for exceptional children. *KRS 159.030(1)(f)*

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

## E. TRANSFER STUDENTS

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

### 1. Students Who Transfer to OCS from a Kentucky Public School District.

(a.) If a child with a disability transfers between school districts within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child will be provided with a free, appropriate public education including services comparable to those described in the previous IEP. These services will be provided in consultation with the parents until the OCS ARC adopts the previous IEP or develops, adopts and implements a new IEP. *707 KAR 1:320 Section 6(1); 34 CFR 300.323 (e)*

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

- (i) the child has a disability and a current IEP;
- (ii) the child has met Kentucky eligibility guidelines for special education and related services;
- (iii) the transferring district provided special education/related services until the child transferred;
- (iv) that due process requirements have been met.

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

### 2. Students Who Transfer to OCS from Outside of Kentucky.

(a.) If a child with a disability transfers between school districts within the same academic year from outside of Kentucky, and had an IEP in effect in another state, the child will be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services will be provided in consultation with the parents until the OCS conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child meets the eligibility criteria as defined in 707 KAR 1:280. *707 KAR 1:320 Section 6(2); 34 CFR 300.323(f)*

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

- (i) the child has a disability and a current IEP;
- (ii) the transferring district provided special education/related services until the child transferred;
- (iii) that due process requirements have been met.

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

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

(e.) If the parent or the ARC determines that the current IEP is not appropriate or cannot be implemented as written, the ARC must develop a new IEP through appropriate procedures within a short time after the child enrolls in the school. In the event that the parents and the ARC are unable to agree upon a temporary

IEP and placement, the OCS will implement the current IEP to the extent possible until a new IEP is developed and implemented.

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

### **3. Students who Transfer During the Evaluation Process.**

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

*707 KAR 1:300 Section 4(13); 34 CFR 300.304(c)(5)*

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

*707 KAR 1:320 Section 2(5)(a); 34 CFR 300.301(e)*

(c) Upon receiving the records of a student who is transferring to the OCS during the evaluation process, OCS staff will review the record and contact the previous school to coordinate the completion of the evaluation.

### **4. Transmittal of Educational Records for Transfer Students.**

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

*707 KAR 1:320 Section 6(3); 34 CFR 300.323 (g)*

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

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

## **IMPLEMENTATION AND SERVICE DELIVERY - 4090.10 - AR**

### **A. IMPLEMENTORS OF THE IEP**

#### **1. Implementers.**

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

(b.) Each person responsible for IEP implementation

- (i) designs and initiates instructional plans for accomplishing measureable IEP goals, benchmarks and/or objectives;
- (ii.) collects student IEP progress data;
- (iii.) maintains records of progress for each student;
- (iv.) uses progress monitoring techniques that are specified in the IEP for the goals, benchmarks/objectives being measures for instructional decision making;
- (v.) reports progress toward measureable goals as documented on the IEP; and
- (vi.) provides feedback to students and parents.

#### **2. Case Manager.**

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

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

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

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

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

#### **3. Paraprofessionals as Implementers.**

(a.) “Teacher’s aide” means an adult school employee who works under the direction of the...teaching staff in performing, within the limitations of his or her training and competency, certain instructional and noninstructional functions in the school program including, but not limited to,...tutoring individual pupils,

leading pupils in recreational activities, conducting pupils from place to place, assisting with classroom instruction as directed by the teacher, . . . and preparing and organizing instructional materials and equipment.  
*KRS 161.010*

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

- (i) assist in carrying out instructional plans for accomplishing IEP measurable goals, benchmarks or objectives;
- (ii) assist in collecting and maintaining records of progress data;

(c.) use progress monitoring techniques that are specified in the IEP for the annual goals, benchmarks/objectives being measured.

#### **4. Instructional Planning for Service Delivery.**

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

#### **5. Implementation for Service Delivery.**

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

#### **6. Supervision of IEP Implementation.**

The ARC Chairperson will ensure that OCS staff is responsible for the supervision and implementation of the IEP. If the ARC Chairperson finds that an IEP is not being implemented, the ARC Chairperson will contact the Director to develop an appropriate plan of action.

### **B. REVIEW OF THE IEP**

**1. Annual Review.** The OCS will ensure that the ARC (a.) reviews each child’s IEP periodically, but not less frequently than 12 calendar months from the date of its development, to determine whether annual goals are being achieved, and

(b.) revises the IEP in accordance with 34 CFR 300.324 (b)(1)(ii) to address:

- (i.) any lack of expected progress toward the annual goals;
- (ii.) any lack of expected progress in the general curriculum, if appropriate;
- (iii.) the results of any reevaluation;
- (iv.) information about the child provided by or to the parents;
- (v.) the child’s anticipated needs;
- (vi.) and other matters.

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

**2. Attendance at Annual Review Meeting.** (a.) The ARC Chairperson will select and invite ARC

members to the ARC meeting called for the purpose of reviewing the IEP. The ARC Chairperson will notify all members to bring a written summary of progress which is reviewed at the ARC meeting, and information about the child to be used in reviewing and revising the IEP. The ARC members will consider student performance data, evaluation information and the progress data maintained by each implementer.

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

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

**4. Revision, Release and Re-evaluation.** (a.) Based on the review of student progress information, the ARC will:

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

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

## C. IEP ACCOUNTABILITY

**1. Good Faith Effort.** (a.) The OCS will provide specially designed instruction and related services to each child with a disability in accordance with his or her IEP and shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks in the IEP. *707 KAR 1:320 Section 9(1)*

(b.) “Good faith effort” means the state of mind denoting honesty of purpose, freedom from intention to defraud, and being faithful to one’s duty or obligation. *Black’s Law Dictionary 6th Ed.*

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

**2. Parent’s Rights.** These provisions do not limit the parents’ right to ask for revision of the child’s IEP or to invoke due process procedures, including mediation, complaint, and hearing procedures, if the parents feel that good faith efforts are not being made. *707 KAR 1:320 Section 9(3)*

## D. GRADUATION AND PROGRAM COMPLETION

### 1. No Distinction.

The OCS Board of Education grants a student with a disability a regular diploma or an Alternative Diploma as part of the graduating class, with no distinction made in the ceremonies. Each student with a disability who completes the secondary program has the opportunity to participate in graduation ceremonies on the same basis as peers who are not disabled. A student who has received a certificate of attainment from the

OCS Board of Education may request that the Board issue an Alternative Diploma in the student's name. Requests should be made through the Director of Exceptional Children's Services.

## **2. Graduation with a Diploma.**

The ARC plans an appropriate course of study leading to graduation and a regular diploma for a student no later than age fourteen (14) according to "Post-School Transition Services" procedures (see IEP procedures). Each student with a disability in OCS has an opportunity to complete high school in the same manner and following the course of study available to students who are not disabled. OCS will grant a regular high school diploma to each student with a disability who meets the required graduation criteria and standards as established by the State Board for Elementary and Secondary Education. OCS personnel will not act in any way to prevent a student with a disability from obtaining a regular high school diploma.

## **3. Determining Alternative Diploma (formerly Certificate of Attainment).**

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

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

(b.) The ARC will document the decisions on the "Participation Guidelines for the Alternate Assessment System" form.

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

## **E. CASE LOADS AND CLASS SIZES**

**1. Caseload for Special Class.** (a.) "Caseload for special classes" means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting. *707 KAR 1:002 Section 1(7)*

(b.) A "special class" means that more than fifty per cent (50%) of the children are served in the class more than fifty per cent (50%) of the school day. The class size requirement of a special class is the same as the caseload requirement.

(c.) The OCS will provide special education for each child with a disability in accordance with the following maximum caseloads for special classes:

- (i) emotional-behavior disability is eight (8);
  - (ii) functional mental disability is ten (10);
  - (iii) hearing impairment is six (6);
  - (iv.) mild mental disability for primary is fifteen (15);
  - (v.) multiple disabilities is ten (10);
  - (vi.) orthopedic impairment is sixteen (16);
  - (vii.) other health impairment is sixteen (16);
  - (viii) specific learning disability for primary is ten (10) and for secondary is fifteen (15); and
  - (ix.) visual impairment is ten (10).
- 707 KAR 1:350 Section 2(1)*

**2. Caseload for Resource Teachers.** (a.) Caseload for resource teachers refers to the maximum number of student records a teacher may be assigned. The OCS will make those assignments based on the following:

- (i.) emotional-behavioral disability is fifteen (15);
- (ii.) functional mental disability is ten (10);
- (iii.) hearing impairment is eight (8);
- (iv.) mild mental disability for primary is fifteen (15) and for secondary is twenty (20);
- (v.) multiple disabilities is ten (10);
- (vi.) orthopedic impairment is twenty (20);
- (vii.) other health impairment is twenty (20);
- (viii.) specific learning disability for primary is fifteen (15) and for secondary is twenty (20);
- (ix.) visual impairment is ten (10); and
- (x.) Speech language pathologist caseload limits as contained in KRS 334A.190.

*707 KAR 1:350 Section 3*

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

*707 KAR 1:002 Section 1(10)*

(b.) The OCS will provide special education according to class size for resource classes for each child with a disability as follows:

- (i) emotional-behavior disability is eight (8);
- (ii) functional mental disability is eight (8);
- (iii) hearing impairment is eight (8);
- (iv) mild mental disability is ten (10);
- (v) multiple disabilities is eight (8);
- (v) orthopedic impairment is ten (10);
  
- (vi) other health impairment is ten (10);
- (vii) specific learning disability is ten (10); and
- (viii) visual impairment is eight (8).

*707 KAR 1:350 Section 2(2)*

(c.) If a teacher of children with disabilities is employed less than full time to provide special education and related services, or provides instructional services for children without disabilities, the Director and the building principal will adjust the teacher's class size and caseload proportionately.

**3. Caseload for Speech and Language Pathologists.** The caseload limitations for speech-language pathologists in the OCS shall not exceed sixty-five (65) pupils. The total caseload of speech-language

pathologists who supervise assistants may be increased by no more than one-half of the amount set forth for each speech-language pathology assistant working under the supervision.

**4. Caseload for a Collaborative Model Class.** If a teacher of exceptional children provides services through the collaborative model, the maximum caseload shall not exceed twenty (20) children with disabilities for secondary school students and fifteen (15) children with disabilities for primary school students. *707 KAR 1:350 Section 2(4)*

**5. Waiver of Caseload or Class size Limits.** If caseload for special classes or class size for resource classes exceeds the maximum specified in this section for thirty (30) days, the OCS will submit a waiver request to the Kentucky Department of Education. Copies of correspondence and copies of the approval or rejection by the DECS will be maintained in the office of the Director. The Director will send a copy of DECS' response to the waiver request to the principal. *707 KAR 1:350 Section 2(5); KRS 157.360.*

## CONFIDENTIALITY - 4090.11-AR

### A. ACCESS RIGHTS

**1. Education Records.** (a.) The OCS adopts the definition of “education records” set forth in the Family Educational Rights and Privacy Act and the Kentucky Family Educational Rights and Privacy Act.

*KRS 160.700(3); 34 CFR 99.3*

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

*707 KAR 1:360 Section 1(1); 34 CFR 300.613(a)*

(b.) The OCS will give full access rights under the Family Educational Rights and Privacy Act to either parent, unless the OCS has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. *34 CFR 99.4*

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

*707 KAR 1:360 Section 1(3); 34 CFR 300.613(c)*

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

*KRS 160.700 (4)*

**3. Explanation and Interpretation of Records.** The right to inspect and review education records shall include: (a) the right to a response from the OCS to reasonable requests for explanations and interpretations of the records (i.e. sign language or foreign language interpreter);

(b) the right to request that the OCS 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.

*707 KAR 1:360 Section 1 (2); 34 CFR 300.613 (b); KRS 160.715 (1)*

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

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

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

*IDEA Interpretation for 34 CFR 300.562 (IDEA 1997)*

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

**6. Record of Disclosure.** The OCS will keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1 (except access by parents and authorized employees of the OCS which will be kept in the student's due process folder as long as the records are maintained. The record will include: (i.) the name of the party; (ii.) the date access was given; and (iii.) the purpose for which the party is authorized to use the records.

*707 KAR 1:360 Section 2; 34 CFR 300.614; 34 CFR 99.32*

## **B. RECORDS ON MORE THAN ONE CHILD**

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

*707 KAR 1:360 Section 3; 34 CFR 300.615; 34 CFR 99.12*

## **C. TYPES AND LOCATION OF INFORMATION**

The OCS will provide parents, on request, a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the OCS. The list, which is kept in the office of the Director, will specify the type of information, (e.g., due process folder, speech folder, psychological/evaluator records), the location (specific school or office) and contact person where each record is located.

*707 KAR 1:360 Section 4; 34 CFR 300.616*

## **D. FEES FOR COPYING RECORDS**

The OCS may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 if the fee does not effectively prevent the parent from exercising his right to inspect and review the records. The OCS will not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

*707 KAR 1:360 Section 5; 34 CFR 300.617; 34 CFR 99.11; KRS 160.715(2)*

The parent will receive a copy of each evaluation and reevaluation report, each eligibility report, each IEP and each Conference Summary Action Notice following the ARC meeting when each specific document is initially discussed or developed. Initial copies are provided to the parent free of charge.

## **E. RECORD AMENDMENT**

**1. Request to Amend Information in Education Records.** (a.) 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 OCS to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the OCS will respond within ten (10) school days.

*707 KAR 1:360 Section 6(1); 34 CFR 300.618(a); 34 CFR 99.20(a); KRS 160.730(1)*

(b.) "Record amendment" refers to changing, deleting, or destroying information in the educational records of a child or youth.

(c.) Upon receipt of a written request from a parent to amend his or her child's records, the Director, and other OCS personnel as needed, will schedule a meeting with the parent to discuss the parent's request and review the record. The written parental request must include the date of the request, and the reason for the request.

**2. Consideration of Request.** (a.) The OCS will decide whether to amend the information in accordance with the parent's written request within a reasonable period of time of receipt of the request.

*34 CFR 300.618(b); 34 CFR 99.20(b)*

(b.) If, after the meeting, the OCS decides to amend the information, the Director will inform the parent in writing of the decision and will amend the record as agreed upon by the parent and the OCS.

(c.) If the OCS decides to refuse to amend the information in accordance with the request, it will inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.619.

*34 CFR 300.618(c); 34 CFR 99.20(c); 702 KAR 1:40 Section 1*

**3. Request for Record Amendment Hearing.** (a.) The OCS will, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1:140 shall apply.

*702 KAR 1:360 Section 6(2); 34 CFR 300.619; 34 CFR 99.21(a)*

(b.) The OCS will arrange for a hearing to be held within thirty (30) days after the request for hearing...The hearing will be conducted by a hearing officer who is a disinterested party and is a certified official of the OCS appointed by the Superintendent.

*702 KAR 1:140 Section 2 (2); 34 CFR 99.22(a-b)*

(c.) A "disinterested party" is a person who: (1) will not benefit or suffer if the decision is for the child and against the OCS, or for the OCS and against the child; and (2) has no direct responsibility or authority for supervision of the child or personnel involved with the child.

(d.) The hearing officer will notify the parents of the time and place of the hearing at least seven (7) calendar days in advance of the hearing date and will issue a written decision to the parties within ten (10) business days following the date of the hearing.

**4. Conduct of Record Amendment Hearing.** (a.) Because the hearing will be private, persons other than the student, parent(s), witnesses, and counsel will not be admitted into the hearing. The hearing officer will hear evidence from the school staff and the student's parent(s) or guardian to determine any points of disagreement regarding the records. The student's parent(s) or guardian will be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's educational records. The parent(s) or guardian may be assisted by one (1) or more individuals, including an attorney.

*702 KAR 1:140 Section 2(3)(4) and (5); 34 CFR 99.22(d)*

(b.) Parents and representatives of the OCS will be given the opportunity to present witnesses, question school employees, and provide oral testimony or written evidence as to the inaccurate or misleading information in the educational records.

**5. Result of Record Amendment Hearing.** (a.) The hearing officer will make a determination in writing within ten (10) business days following the close of the hearing. The hearing officer will make a determination based solely on the evidence presented at the hearing, and will include a summary of the evidence and the reason for the decision. The parties to the hearing will be provided a copy of the hearing officer's decision.

*702 KAR 1:140 Section 2(6); 34 CFR 99.22 (e-f)*

(b.) If, as a result of the hearing, the hearing officer decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the OCS will amend the information accordingly and inform the student's parent(s) or guardian of the amendment in writing.

*702 KAR 1:140 Section 3(2); 34 CFR 300.620(a); 34 CFR 99.21(b)*

(c.) The OCS maintains the documents related to the hearing separate from the educational records of the child or youth and destroys the records in accordance with destruction of information procedures

(d.) If the hearing officer decides after the hearing that the challenged information is NOT inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the OCS will inform the student's parent(s) or guardian of the right to place a statement in the record commenting on the contested information or stating why he or she disagrees with the decision of the hearing officer. The statement will be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the record, it shall also disclose the statement.

*702 KAR 1:140 Section 3(1); 34 CFR 300.620(b-c)*

## **F. DISCLOSURE OF EDUCATIONAL RECORDS**

**1. List of Persons Who May Have Access to Educational Records.** (a.) The OCS will maintain, for public inspection, a current listing of the names and positions of employees within the OCS who may have access to personally identifiable student information.

*707 KAR 1:360 Section 8(4); 34 CFR 300.623(d)*

(b.) The Director will develop a list of the names and positions of DISTRICT LEVEL staff that may have a legitimate educational interest and access to personally identifiable information in educational records. The Director posts the list in the Central Office, and disseminates the list to each school building.

(c.) Each school develops a list of the names and positions of all BUILDING LEVEL staff that may have a legitimate educational interest and access to personally identifiable information in educational records. The principal posts the list of the school and district level staff with the special education files.

**2. Written Parental Consent.** (a.) Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 17, parental consent shall be obtained before personally identifiable student information is: (i) disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Ch. 1; or (ii.) used for any purpose other than meeting a requirement under 707 KAR Ch. 1.

*707 KAR 1:360 Section 7(1); 34 CFR 300.622(a); KRS 160.720 (1)*

(b.) The written consent must: (i.) specify the records that may be disclosed; (ii.) state the purpose of the disclosure; and (iii.) identify the party or class of parties to whom disclosure may be made.

*34 CFR 99.30(a)*

**3. Consent for Release of Information for Transition Services.** Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 C.F.R. 300.321 (b)(3). Copies of the completed forms are maintained in the educational records of the student.

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

**4. Disclosure without Consent.** The OCS will not release information from education records to participating agencies without parental consent unless authorized to do so under the Family Education

Rights and Privacy Act, 20 U.S.C. Section 1232g.

*707 KAR 1:360 Section 7(2); 34 CFR 300.622(a); 34 CFR 99.31; KRS 160.720(2)*

**5. Release of Education Records to another Public School District.** (a.) The notice of rights to parents of enrolled students and eligible students includes a statement that the OCS releases the educational records, without parental consent, of a child who seeks to or enrolls in another public school district. The request for records may be made by the parent, the eligible student, or personnel of the receiving school.

(b.) Upon receipt of a request for records from the receiving district, the principal or designee will document the request on the Record of Disclosure, and provide copies (not originals) of the following special education records to the requesting public school district and place the special education record of the child on inactive status:

- (i) consent to Evaluate/Reevaluate;
- (ii) consent for Specially Designed Instruction;
- (iii) current Conference Summary Action Notice;
- (iv) current IEP, student performance information, and data summaries;
- (v) current Assessment Report and Eligibility Determination;
- (vi) initial Assessment Report and Eligibility Determination;
- (vii) consent to bill Medicaid; and, if appropriate,
- (viii) ESY data.

(c.) If a child transfers to another school within the OCS district's boundaries, the entire special education record will be transferred to the receiving school.

(d.) If a child is enrolled, or is going to enroll in a private school that is not located in the OCS district parental consent must be obtained before any personally identifiable information about the child may be released between officials in the LEA where the private school is located and the OCS.

*34 CFR 300.622(3)*

**6. Records Regarding Migratory Children with Disabilities.** (a.) The OCS will shall transfer health and education records on migratory children with disabilities who move to other states in accordance with the No Child Left Behind Act, 20 U.S.C. 6398.

*707 KAR 1:290 Section 10; 34 CFR 300.213*

(b.) If OCS receives a request from a school or agency in another state regarding a migratory student, the principal or designee will request that the parent sign the "Authorization for Use and Disclosure of Information" before any educational records are sent.

**7. Re-disclosure of Personally Identifiable Information.** (a.) When personally identifiable information from an education record is disclosed, it is done so on the condition that the party to whom the information is disclosed will not disclose the information to another party without the prior consent of the parent or eligible student. The OCS will inform any party to whom disclosure is made of the requirements of this section.

*34 CFR 99.33(a) (1) and (d)*

(b.) Information received by the OCS will be used only for the purposes for which the disclosure was made.

(c.) Prior to re-disclosing any information in an education record that was obtained from another source, the OCS will obtain the parent or eligible student's written consent for re-disclosure which may be submitted on the "Authorization of Use and Disclosure of Information" form.

**8. Parent Refusal to Release Information.** If a parent refuses to provide consent for release of personally identifiable information necessary to provide a free appropriate public education, a party may request a due

process hearing pursuant to 707 KAR 1:340 or comply with the FERPA.

*707 KAR 1:360 Section 7(3)*

## **F. CONFIDENTIALITY SAFEGUARDS**

**1. Records Security.** The OCS will protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

*707 KAR 1:360 Section 8(1); 34 CFR 300.623(a)*

**2. Persons Responsible for Ensuring Confidentiality.** (a.) The OCS will assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.

*707 KAR 1:360 Section 8(2); 34 CFR 300.623 (b)*

(b.) The Director of Pupil Personnel is responsible for ensuring the confidentiality of personally identifiable information for all students. The Director is responsible for the general supervision of all educational records related to children and youth with disabilities. Building principals have responsibility for all records maintained at the building level even though teachers may have custody of the records.

**3. Confidentiality Training.** (a.) Any OCS employee collecting or using personally identifiable information will receive training or instruction regarding the requirements of 707 KAR 1:360.

*707 KAR 1:360 Section 8 (3); 34 CFR 300.623 (c)*

(b.) The OCS provides training for all OCS personnel who collect, use, or maintain personally identifiable information. Within thirty (30) calendar days prior to the start of school, all OCS administrative staff are trained regarding OCS policies and procedures for confidentiality. Within thirty (30) calendar days of the start of school, all other OCS personnel who have access to educational records are trained by the building principal or the principal's designee regarding OCS policies and procedures regarding confidentiality. When new staff members are employed during the school year, training is provided in confidentiality. Copies of documentation for confidentiality training are maintained by the Director at the Central Office.

(c.) OCS will provide training for volunteers and any others who may have access to personally identifiable information such as mentors, foster grandparents, student teachers, etc.

## **G. DESTRUCTION OF INFORMATION.**

**1. Notification.** (a.) The OCS will inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information will be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.

*707 KAR 1:370 Section 2(2); 34 CFR 300.131 (a) & (b)*

*707 KAR 1:360 Section 9; 34 CFR 300.624 (a-b)*

(b.) The Kentucky Records Retention Schedule governs the destruction of all school records, and specifies that special education records must be maintained for three years after the last activity involving special education services for the specific child.

When OCS determines that educational records are no longer needed to provide services for a child with a disability, the Director notifies students and parent(s) to inform them of the date the records will be destroyed by publishing a notice in the newspaper regarding the record destruction and the date the records will be destroyed.

**2. Parent Request for Destruction of Records.** (a.) If a parent requests the destruction of educational records, the Principal or designee destroys the records in accordance with the requirements of the Kentucky State Library and Archives Records Retention Schedule. The Records Retention Schedule governs the destruction of all school records, and specifies that special education records must be maintained for three years after the last activity involving special education services for the specific child.

(b.) If a parent requests destruction, the OCS does not destroy any records that have not been retained for the minimum period of time required by the retention schedule, or if there is:

- (i) an outstanding request to inspect or review the records;
- (ii) an unresolved finding of noncompliance in a program or fiscal audit; or
- (iii.) a need for the records for planning and implementing an individual educational program to demonstrate compliance with applicable state and federal requirements.

(c.) If the parent of a student with disabilities requests the destruction of records, the OCS Representative informs the parent or eligible student that the records may be needed to establish social security benefits or other purposes prior to destruction.

## **H. RIGHTS OF THE ELIGIBLE STUDENT**

**1. Transfer of Rights.** The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law. 707 KAR 1:360 Section 10; 34 CFR 300.625(b)

**2. Notice to Parents and Student.** Prior to the student's eighteenth (18<sup>th</sup>) birthday, the OCS provides notice to the parent and the student that the rights regarding review, inspection, and disclosure of records will transfer to the student at the age of eighteen (18). The notice and documentation is maintained the student's due process file.

**3. Prohibition on Disclosures.** The OCS does not disclose educational records of a youth over the age of eighteen (18) to the parent without: (a.) the student's written consent; (b.) a court order; or (c.) proof that the student is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954.

## **CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS - 4090.12-AR**

### **A. PRIVATE SCHOOL CHILDREN WITH DISABILITIES**

#### **1. “Private School Definition”.**

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

*707 KAR 1:280 Section 1(47); 34 CFR 300.130*

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

*707 KAR 1:280 Section 1(31)*

#### **2. Child Find Activities In Private Schools.**

(a.) The OCS will locate, identify, and evaluate all private school children with disabilities, including school children attending private, religious schools within the boundaries of the OCS. These activities will be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. The OCS will include parentally-placed private school children who attend private schools within the OCS’s boundaries but reside in a state other than Kentucky in the OCS’s child find activities.

(b.) The OCS will consult with appropriate representatives of the private schools on how to carry out these activities.

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

*707 KAR 1:370 Section 2(1), (3), (4); 34 CFR 300.131*

(d.) If, through Child Find activities, the OCS locates a child who is parentally placed in a private school within the OCS’s boundaries, OCS staff may not disclose information to the child’s school of residence without first obtaining written parental consent.

#### **3. Child Tracking System for Students Enrolled by their Parents in Private School.**

The OCS will maintain in its records and provide to KDE the following information related to children parentally placed in private schools:

(a.) the number of children in the referral and evaluation process;

(b.) the number of children determined to be children with disabilities; and

(c.) the number of children receiving needed special education and related services

(d.) the number of children who have been determined eligible for special education and related services but are not currently receiving these services.

*707 KAR 1:370 Section 2(2); 34 CFR 300.131 (a) & (b)*

#### **4. Evaluation for Services.**

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 OCS shall:

(a.) not use the procedures for mediation, dispute resolution meeting, or a due process hearing;

(b.) not be required to consider the child as eligible for services; and

(c.) document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place or employment visits, and the results of these efforts.

*707 KAR 1:370 Section 3; 34 CFR 300.140*

## **5. Eligibility for Services.**

The ARC follows OCS procedures for PROCEDURAL SAFEGUARDS, EVALUATION, ELIGIBILITY, and IEP for parentally-placed private school students.

## **B. FAPE AVAILABILITY FOR PRIVATE SCHOOL STUDENTS.**

### **1. Availability of FAPE.**

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

*707 KAR 1:370 Section 1(1); 34 CFR 300.148(a); KRS 157.280 (3)*

(b.) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. There is no individual right to special education and related services, but the student will receive the services provided in the service plan in accordance with the services the OCS has determined to provide.

*707 KAR 1:370 Section 6(2); 34 CFR 300.138(a)(2); 34 CFR 300.137(a)*

### **2. Services Plan.**

(a.) A private school child with a disability who has been designated to receive services will have a services plan that describes the specific special education or related services that the OCS will provide.

*707 KAR 1:370 Section 6(3); 34 CFR 300.138 (b)*

(b.) If, after the ARC determines the child meets eligibility for a disability, the parents make clear their intention to enroll (or continue enrollment of) their child at a private school, the ARC does not develop an IEP for the child. The ARC may determine the child may receive services through a Services Plan that describes the special education or related services OCS will provide according to the procedures.

*OSEP Memo, Q&A #8, May 2000*

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

*707 KAR 1:370 Section 4(1); 34 CFR 300.138(b)(1)*

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

*707 KAR 1:370 Section 4(2); 34 CFR 300.138(b)(2)*

(e.) OCS will conduct ARC meetings for every child who is enrolled in a private school and has been evaluated by OCS. If the child meets eligibility for a disability, the ARC Chairperson provides a full and complete explanation of the services the child would receive if enrolled in OCS. The ARC may determine the child may receive services through a Services Plan if the parents do not enroll their child in the OCS.

(f.) OCS does not provide classes in the general curriculum for the private school student at the public school

### **3. Implementation of the Services Plan.**

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

- (i.) meet the requirements of an IEP under 707 KAR 1:320 with respect to the services provided;
- and

(ii.) be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs. *707 KAR 1:370 Section 6(4); 34 CFR 300.138(b)(2)*

(b.) If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from the OCS, the OCS will:

- (i.) initiate and conduct meetings to develop, review, and revise a services plan for the child; and
- (ii.) ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the OCS will use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

*34 CFR 300.137 (c)*

(c.) Services delivered through a service plan will be provided by: (i.) employees of the OCS; or (ii.) through a contact with the OCS. Special education and related services provided through a service plan will be secular, neutral, and nonideological. *707 KAR 1:370 Section 6(5),(6); 34 CFR 300.138(c)(1),(2)*

#### **4. Reevaluation for Continued Eligibility.**

(a.) OCS will conduct three-year reevaluations of children with disabilities who attend private schools. If the child is receiving services from the OCS through a Services Plan, the ARC Chairperson will send a Notice to the parent according to NOTICE OF ARC MEETING procedures.

(b.) If the child does NOT receive services from OCS, but has been previously identified as a child with a disability, the OCS will send a notice to the parent to schedule an ARC for the purpose of reviewing current information and planning an evaluation.

#### **5. Location of Services.**

(a.) A service to a private school child with a disability may be provided at a site determined by the OCS. 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 will be provided transportation:

- (i) from the child's school or the child's home to a site other than the private school; and
- (ii) from the service site to the private school, or to the child's home, depending on the timing of the services.
- (iii) The OCS is not required to, and will not, provide transportation from the child's home to the private school. *707 KAR 1:370 Section 7(1),(2); 34 CFR 300.139 (b)*

(b.) The OCS will work in consultation with representatives of private school children to ensure that services are provided at sites that will not require significant transportation costs.

(c.) If the child attends a private school outside the boundaries of the OCS, the public school district in which the private school is located is required to provide the services.

### **C. FORMAL COMPLAINT**

**1. Availability of Due Process Procedures.** The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340 Sections 4, 6, 8, 9, 10, 11, and 12 shall not apply to complaints that the OCS 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 OCS 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. *707 KAR 1:370 Section 8(1); 34 CFR 300.140(a)(b)(c).*

Parents of students who are voluntarily enrolled in private schools and receiving services under a Services Plan cannot seek mediation or a due process hearing regarding the school's alleged failure to meet the requirement of providing services to the child. The parents may request a meeting to review and revise the child's Services Plan, or file a complaint with the Kentucky Department of Education, according to the State Complaint Procedures (see PROCEDURAL SAFEGUARDS 4090.04-AR).

**2. Due Process Procedures.** In the event of disagreements between the parents and the OCS, the OCS representative will provide the parent with an explanation of the rights of the parent regarding private school placement.

#### **D. CONSULTATION WITH REPRESENTATIVES OF PRIVATE SCHOOLS**

**1. Areas of Consultation.** The OCS will consult in a meaningful and timely fashion with private school representatives, and parents or representatives of parent of parentally-placed 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:

(i) a discussion of 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

(e.) how the OCS will provide a written explanation to the private schools of the reasons why the OCS chose not to provide services directly or through a contract, if the OCS disagrees with the views of the private school representatives.

*707 KAR 1:370 Section 5(1); 34 CFR 300.134(a-d)*

**2. Solicitation of Input from Private Schools.** (a.) The Director will obtain a list of students who reside in the district and are attending private schools from the Director of Pupil Personnel (DPP). This list will be maintained by the DPP from information provided in accordance with KRS 159.160, which requires non-public schools to report to the local superintendent information needed to comply with the laws regarding compulsory school attendance. The Director will send a letter to selected representatives of private schools where residents of the OCS may attend school. The letter offers the private school representatives an opportunity for input into the OCS's plans for conducting Child Find activities for private school students; funding available for services; and the number of OCS residents with disabilities who attend private school, and the location and needs of the students. The Director will maintain written records of the input received from the private school representatives.

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

the KDE.

*707 KAR 1:370 Section 5(2); 34 CFR 300.135(a) & (b)*

**3. Final Decision Making Authority.** The OCS personnel will make the final determination concerning the types and levels of services to be provided to students parentally placed in private schools.

## **E. DETERMINATION OF PROPORTIONATE AMOUNT OF SPENDING**

**1. Proportionate Spending Requirements.** To meet the requirements of 707 KAR 1:370 Section 4, the OCS will spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 CFR 300.133. This amount will be determined after the OCS 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.

*707 KAR 1:370 Section 4(3); 34 CFR 300.133(c)*

**2. Proportionate Spending Calculation.** (a.) Information from the child tracking system is used to determine the proportionate amount of funding to be spent on private school students with disabilities. The proportionate amount is a ratio based on the total number of children who are eligible for services, not children actually served. The amount is derived from dividing the total number of parentally-placed private and home school students eligible for special education services by the total number of children with disabilities who are eligible for special education services. This provides a percent of the IDEA-B grant to be spent on parentally placed private and home school students. OCS may expend funds on only one student (e.g. an interpreter) or may decide to fund only one service (e.g. Occupational Therapy).

(b.) The funds expended to meet the proportionate share requirement do not have to be Federal funds. State categorical aid funds or local funds will meet the requirement of the proportionate share of funds. However, Section 189 of the Kentucky Constitution prohibits the appropriation, use, or aid of any non-public (private) school through state taxes levied for educational purposes (e.g., teachers paid from the district general fund cannot provide services at the private school site).

(c.) The OCS will not consider the costs, including the cost of individual evaluations incurred by the OCS's child find activities, in meeting its obligation under 707 KAR 1:370 Section 4(3).

*707 KAR 1:370 Section 2(4); 34 CFR 300.131(d)*

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

*707 KAR 1:370 Section 7(3); 34 CFR 300.139(b)(2)*

## **F. RESTRICTIONS ON SERVING NON-PUBLIC SCHOOL STUDENTS**

**1. Use of Funds.** (a.) The OCS will 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 OCS will use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for: (i.) the needs of a private school; or (ii.) the general needs of the students enrolled in the private school.

*707 KAR 1:370 Section 9(1); 34 CFR 300.141(a),(b)*

(b.) The OCS will not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities.

*707 KAR 1:370 Section 9(7); 34 CFR 300.144(e)*

(c.) The Director will monitor the use of Part B funds for children voluntarily placed by their parents in private schools to ensure compliance with these restrictions.

**2. Personnel.** (a.) The OCS will ensure that services provided under a Services Plan will be provided by personnel meeting the same standards as personnel providing services in the public school, except private school teachers that provide services under a service plan do not have to meet the highly qualified special education teacher requirements of 20 U.S.C. 1401(10).

*707 KAR 1:370 Section 6(1); 34 CFR 300.138(a)(1)*

(b.) The OCS 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. The Director monitors the amount of Part B funds utilized for salaries or contracted service delivery purposes by specific individual and job assignment.

*707 KAR 1:370 Section 9(2); 34 CFR 300.142(a)*

(c.) The OCS 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 OCS. The Director will make this determination after consultation with the Superintendent. All services will be provided for by contract between the OCS and the employee.

*707 KAR 1:370 Section 9(3); 34 CFR 300.142(b)*

**3. Property, Equipment and Supplies.** (a.) The OCS will keep title to and exercise continuing administrative control of all property, equipment, and supplies that the OCS acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities. The OCS may place equipment and supplies in a private school for the period of time needed to provide the services. The Director keeps an inventory of any property, equipment and supply items purchased through the use of Part B funds that are utilized to provide benefit to private school children with a disability through Service Plans.

*707 KAR 1:370 Section 9(4); 34 CFR 300.144(a),(b)*

(b.) The Director will ensure that the equipment, and supplies placed in a private school are secure, not permanently installed and are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

*707 KAR 1:370 Section 9(5); 34 CFR 300.144(c)*

(c.) The OCS will 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.

*707 KAR 1:370 Section 9(6); 34 CFR 300.144(d)*

(d.) The Director will instruct OCS staff to report any suspected unauthorized use of the items. The Director may remove the items from the private school site at any time if the Director has reason to believe that the items are being used in an unauthorized manner or by unauthorized persons.

## **G. PARENTAL PLACEMENT OF A CHILD WHO PREVIOUSLY RECEIVED SPECIAL EDUCATION AND RELATED SERVICES**

**1. Financial Reimbursement to Parents.** If a parent of a child with a disability, who previously received special education and related services under the authority of the OCS, enrolls the child in a private school without the consent of or referral by the OCS, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the OCS 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 OCS for the private placement and the OCS 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 a public school district.

*707 KAR 1:370 Section 1(2); 34 CFR 300.148(c)*

**2. Reduction or Denial of Reimbursement.** (a.) The cost of the financial reimbursement described above may be reduced or denied if:

- (i) at the most recent ARC meeting prior to the removal of the child by the parents to the private school, the parents did not inform the OCS that they were rejecting the proposed OCS placement, including stating their concerns and their intent to enroll the child in a private school at public expense;
- (ii) the parents did not give written notice to the OCS of the information described in (a) above at least ten (10) business days, including any holidays occurring on a business day, prior to removal of the child;
- (iii) prior to the parent's removal of the child, the OCS 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
- (iv) there is a judicial finding that the actions taken by the parents were unreasonable.

*707 KAR 1:370 Section 1(3); 34 CFR 300.148(d)*

(b.) The cost of financial reimbursement will not be reduced or denied for the failure to provide the above notice if:

- (i) the parent is illiterate;
- (ii) compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
- (iii) the school prevented the parent from providing the notice; or
- (iv) the parent had not received notice from the OCS of his obligation to provide this notice.

*707 KAR 1:370 Section 1(4); 34 CFR 300.148(e)*

(c.) The OCS will include notice of the above parent responsibilities in the written Notice of Parental Procedural Safeguards (parent rights) document provided according to procedures.