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## DEFINITIONS

**“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.

**“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.

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

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

**"Certificate of Attainment"** means the certificate a student with a disability who meets criteria for an alternate assessment system receives upon completion of a program designed by the Admissions and Release Committee.

**"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 (HCPS) 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.

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

**“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.

**“Corrective action plan”** or **“CAP”** means a written improvement plan describing activities and timelines, with persons responsible for implementation, developed to correct identified areas of non-compliance, including directives from the Kentucky Department of Education, specifying actions to be taken to fulfill a legal obligation.

**“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.

**“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 or is married under the age of 18 years. 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, HCPS 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.

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

**“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 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 diploma and leaves the school system. The Board of Education grants a youth with a disability a diploma who has met the State Board of Education criteria standards. Each youth with a disability who completes the secondary program is given the opportunity to participate in graduation ceremonies with peers who are not disabled.

**“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.

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

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

**“KLEA Representative”** means a representative of the HCPS 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 HCPS.

**“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 HCPS 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.

**“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, agency, or corporation appointed by the District Court to have care, custody, and control of a minor who has been declared legally incompetent pursuant to KRS Chapter 387. HCPS obtains an official copy of the court order appointing a legal guardian.

**“Local educational agency”** or HCPS 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. Local educational agency 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.

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

**“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:

1. (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.
2. (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 HCPS.

**“Public expense”** means that the HCPS 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”** means personnel who meet the statutory or regulatory qualifications for each respective profession currently applicable in this state.

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

**“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.

**“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 HCPS 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.

**"Release"** means a child with a disability no longer needs special education and related services and ARC releases the child from services. The ARC completes a reevaluation prior to releasing the child.

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

**"School day"** means any day, including a partial day that children are in attendance at school for instructional purposes.

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

**"Services plan"** means a written statement that describes the special education or related services that the HCPS 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.

**“Special education class”** means a setting where personnel provide specially designed instruction and related services and where all of the children or youth have disabilities. A special education class is provided only if needed to implement the placement decision of an ARC for a child or youth with a disability.

**“Special education mentor”** means individuals with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197, Kentucky Special Education Mentor Program.

**“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 (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 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 which is the direct result of: 1. a hearing impairment; 2. visual, physical, mental, or emotional-behavioral disabilities; or 3. environmental, cultural, or economic differences. KRS 157.200 (1) (f)

**“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.

**“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.

**“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.

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

## FREE APPROPRIATE PUBLIC EDUCATION

An LEA shall make a free appropriate public education (FAPE) available to all children with disabilities aged three (3) to twenty-one (21) residing within its district's boundaries who have not received a high school diploma, including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year.

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

HCPS makes a free appropriate public education (FAPE) available to children with disabilities and provides the child and parents all the rights under Part B of the Individuals with Disabilities Education Act (IDEA), Kentucky laws, and administrative regulations.

HCPS shall ensure that a free appropriate public education is available to each child with a disability:

1. whose age is three (3) to twenty-one (21) years;
2. who resides in a home, facility, residence, or any type of shelter within HCPS's geographical boundaries;
3. who has a disability, regardless of the severity (according to procedures for **Evaluation and Eligibility**);
4. who needs special education and related services (according to procedures for **IEP**);
5. who has been suspended or expelled for more than a total of ten days in a school year (according to **Providing Services** in procedures for **Discipline**); and
6. who resides within HCPS boundaries who has not graduated with a general education diploma or certificate of completion/attainment (according to **Release Due to Withdrawal From School** in procedures for **Placement in the Least Restrictive Environment**).

### Standards For Determining FAPE

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)

HCPS provides services for students with disabilities of school attendance age three (3) to twenty-one (21) years, consistent with the Kentucky Program of Studies, Core Content for Assessment, 707 KAR Chapter 1, and HCPS Board Policy.

Services for students with disabilities include:

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

FAPE is provided through an IEP that serves as a program of reasonably designed

strategies and services to meet the individual needs of a student with a disability in the general education curriculum.

### **FAPE Not Required**

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

707 KAR 1:290 Section 1 (1)

34 CFR 300.102 (a) (2)

### **No Cost to Parents**

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

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

707 KAR 1:280 Section 1 (27)

34 CFR 300.17

“Public expense” means that the LEA either pays for the full cost of the services to meet the requirements of 707 KAR Chapter 1 (special education regulations) 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.

707 KAR 1:280 Section 1 (48)

HCPS makes sure that any expenses for the identification, evaluation, and educational placement of a child with disabilities, or the provision of special education and related services for a child with disabilities are at no cost to parents.

At no cost to parents also includes at no cost to the child if emancipated (age eighteen or married).

This requirement does not preclude charging incidental fees which are normally charged to children without disabilities or their parents as part of the general education program (e.g., activity fees, field trips, etc.).

HCPS 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.

### **Proper Functioning Of Hearing Aids**

An LEA shall ensure that a hearing aid worn in school by a child with a hearing impairment is functioning properly. An LEA shall ensure that the external components of surgically implanted devices of children with disabilities are functioning properly; however, a LEA shall not be responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted.

707 KAR 1:290 Section 3

34 CFR 300.113

The DoSE assigns a person to make sure the hearing aids of the students who have hearing impairments are properly functioning.

### Prohibition of Mandatory Medication

LEA personnel shall not require a child to obtain a prescription for a substance covered by schedules I, II, III, IV, or V of the Controlled Substance Act (21 U.S.C. 812 (c)), as a condition of attendance in school, receiving an evaluation under 707 KAR 1:300, or receiving services under 707 KAR Chapter 1. However, school personnel may consult or share classroom-based observations with parents or guardians regarding 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

HCPS staff does not require children to obtain prescription medication covered by the Controlled Substance Act as a condition for school attendance, special education evaluation, or special education services.

### CHILD FIND CHILD FIND SYSTEM

(1) An LEA shall have in effect procedures that plan and implement a child find system to locate, identify, and evaluate each child:

- (a) whose age is three (3) to twenty one (21);
- (b) who resides in a home, facility, or residence within the LEA's geographical boundaries, including children with disabilities who attend private schools located within the LEA's 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;

(2) for preschool age children with disabilities, a LEA must ensure a smooth and effective transition from the early intervention program to preschool; and

(3) each LEA shall participate in transition planning conferences for children with disabilities served by early intervention programs.

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

HCPS makes a systematic effort to identify all children who may have a disability and need special education and related services. The Child Find system includes activities to locate, identify, and evaluate each child who:

1. is three (3) to twenty-one (21) years of age;
2. is out-of-school or in-school;
3. attends a private school in the district;
4. is highly mobile such as migrant and homeless children;
5. who may need special education and related services;
6. are wards of the state or are in state custody;
7. is advancing from grade to grade resulting from passing a grade but who still may have a disability; and
8. need transition planning conferences to ensure a smooth and effective transition from the early intervention program to preschool (see **Preschool Transition** procedures in IEP).

### Child Find Activities in Private Schools



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

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

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

707 KAR 1:370 Section 2 (1), (3), (4)  
34 CFR 300.131

If the HCPS locates a child who is parentally placed in a private school within the boundaries of the HCPS, the HCPS staff can not disclose information to the school of residence without obtaining written parental consent (see **Release of Education Records to another Public School District in Confidentiality** procedures).

HCPS' Child Find System is:

1. available throughout the calendar year during the normal business day;
2. involves opportunities for parent and community involvement; and
3. informs all involved personnel of due process and confidentiality procedures and requirements according to **Training and Awareness** in procedures for **Child Find**.

## LOCATION ACTIVITIES

HCPS includes the involvement of parents and community in the Child Find System. During the year, HCPS actively seeks and locates children who may have disabilities by:

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

## Public Notice

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

- (1) a description of the extent that the notice is given in the native languages of the various population groups in the state;
- (2) 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;
- (3) 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

(4) 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

Annually, and before any major identification, location, or evaluation activity, HCPS gives public notice about child identification activities. The public notice is published in the Student Handbook and is provided in conjunction with the Family Educational Rights and Privacy Act (FERPA) notice.

HCPS makes the public notice available in the native language or other mode of communication of the various populations to the extent feasible, including any language or other communication mode that requires an interpreter or translator.

The public notice includes:

1. a description of children for whom the district will keep personally identifiable information;
2. the types of information the district wants to obtain;
3. the methods the district intends to use to gather the information, including the sources from whom information is gathered, including basic tests administered to, or procedures used with, all children or youth of a given age or in a school, grade, or class which do not require parental consent (e.g., preschool screening);
4. how the district will use the information it gathers;
5. a summary of the district's procedures for storage, disclosure to third parties, retention, and destruction of the information gathered; and
6. a description of the rights of parents and children regarding the information, including the rights under the Family Education Rights and Privacy Act (FERPA) and its implementing regulations.

The DoSE sends the public notice and information to a variety of locations to reach parents who are:

1. non-readers;
2. without access to mass media (newspaper, radio, internet, and TV);
3. without children in school;
4. homeless; or
5. not primarily English speaking.

Annually, the DoSE or designee obtains information about families residing in HCPS 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 is interpreted, or translated and published in the other language. If someone cannot be identified to appropriately translate the notice (e.g., by checking the KDE web site for a translation; by contacting surrounding colleges and universities, etc.), the district contacts KDE, in writing, for assistance in securing the necessary interpretation or translation.

Copies of all letters of correspondence involved in securing necessary interpretations or translation of the notice, and a copy of any translation are on file in the central office.

## Training and Awareness

Annually, the DoSE or designee conducts awareness activities with HCPS personnel to notify them of the need to find children with disabilities who may need special education and related services. The DoSE keeps copies of sign-in sheets and agendas.

The DoSE or designee trains or updates HCPS administrative personnel about procedures for due process, confidentiality, and referral of children who may have disabilities and need special education and related services. Principals or their designees provide training for their respective staffs within 30 calendar days of the start of school (see also **Confidentiality Training** in procedures for **Confidentiality**). Each September, the DoSE or designee sends Child Find posters to each school building.

## CHILD TRACKING SYSTEM

An LEA shall have in effect policies and procedures that plan and implement a child find system to locate, identify, and evaluate each child.

707 KAR 1:300 Section 1  
34 CFR 300.111 (a) (1) (ii)

Child Find for Children with Disabilities Enrolled by their Parents in Private School.

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

- (a) the number of children evaluated under this section;
- (b) the number of children determined to be children with disabilities under this section; and
- (c) the number of children served under this section.

707 KAR 1:370 Section 2 (2)  
34 CFR 300.131 (a) & (b)

HCPS has developed and implements a child tracking system that monitors:

1. children who are in the referral and evaluation process;
2. children who are determined to have a disability;
3. children who are currently receiving needed special education and related services, including private school children receiving services as outlined in a Services Plan; and
4. children who have been determined eligible for special education and related services but are not currently receiving these services, including children in private schools who do not have a Service Plan.

The Child Tracking System allows access to needed information for district, state and federal data reports; and includes methods for keeping accurate records on the current status of all children in the process of identification; location; referral; evaluation; placement; provision of a free and appropriate education; review; and reevaluation.

The DoSE maintains a child tracking system which provides information and the current status of children in the process of location, referral, evaluation, eligibility, services, placement, review, and reevaluation. This includes, but is not limited to, children in:

1. HCPS,
2. private schools,
3. parochial schools,
4. Head Start,
5. state operated schools,

6. hospitals or other treatment facilities,
7. Cabinet for Families and Children programs,
8. Department of Juvenile Justice programs,
9. Correctional facilities, and
10. home schools.

The DoSE also maintains information in the child tracking system on children who are eligible for services but not receiving services, and HCPS resident children who are placed by HCPS in another school district or agency.

The DoSE shall ensure that all child tracking data are collected and stored and HCPS staff who have access to child tracking data are trained according to **Confidentiality Training** in procedures for **Confidentiality**.

## PROCEDURAL SAFEGUARDS

### TIMELINES

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

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

707 KAR1:320 Section 2 (2)  
34 CFR 300.301 (c) (1) (i)

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

707 KAR1:320 Section 2 (3)  
34CFR 300.323(c) (1)

Within 60 school days of the receipt of parental consent for initial evaluation of a child:

- evaluation is completed,
- eligibility is determined, and
- IEP is developed and implemented

### Exception to the Timelines

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

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

or

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

707 KAR1:320 Section 2 (5)  
34 CFR 300.301 (d) (1) & (e)

Upon receiving the records of a student who is transferring to HCPS during the evaluation process, HCPS staff reviews the record and contacts the previous district to coordinate the completion of the evaluation. HCPS staff reviews the status of the child's evaluation and determines if the sixty (60) school day timeline can be met. HCPS staff

shall discuss with the parent the progress of the child in the evaluation process and work together to agree on the timeline for completion of the evaluation.

HCPS staff follow **Transmittal of Educational Records for Transfer Students in procedures for Placement in the Least Restrictive Environment.** (See also procedures for **Students Who Transfer During the Evaluation Process in Evaluation procedures.**)

## **ARC MEMBERSHIP**

HCPS establishes 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.

An LEA shall ensure that the ARC for each child with a disability includes:

- a. the parents of the child;
- b. not less than one (1) regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general education curriculum for same aged peers;
- c. 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;
- d. a representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the LEA;
- e. an individual who can interpret the instructional implications of evaluation results, who may also be a member of the team described in 707 KAR 1:320 Section 3 (1) (b-d);
- f. an individual who has knowledge or special expertise regarding the child, at the discretion of the parent or the LEA;
- g. related services personnel, as appropriate; and
- h. the child, if appropriate.

707 KAR 1:320 Section 3 (1)  
34 CFR 300.321 (a)

The Superintendent, in consultation with the DoSE, will recommend to the Board for approval a list of HCPS Representatives by job or position title. The Superintendent, or designee, may designate which specific staff member on that approved list will serve as the HCPS Representative for any ARC meeting. The DoSE maintains a copy of the written approval. The DoSE makes sure that Board approval and training for the designee(s) occur before the designee serves in any capacity as the HCPS Representative.

At a minimum, the ARC meeting has in attendance the HCPS Representative or designee, a regular education teacher of the child (if the child is or may be participating in the regular education environment), a special education teacher, related service providers, and the child, if appropriate. If evaluation information is to be discussed, one member is present to interpret the instructional implications of evaluation results.

## **Parent Participation in the ARC**

The LEA shall ensure that the ARC for each child with a disability includes the parents of the child.

707 KAR 1:320 Section 3 (1) (a)  
34 CFR 300.321 (a) (1)

A parent of a child with a disability shall be afforded an opportunity to :

- (a) inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and
- (b) participate in all ARC meetings concerning his child.

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

The parents of the child participate in discussions about the need for special education and related services and supplementary aids and services; and decide with the ARC how their child will be involved and progress in 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.

The parents participate by:

1. providing information about the child, including information about the child outside the school setting;
2. providing input for development of the IEP;
3. giving written consent for evaluation, initial placement, and reevaluation; and
4. providing support for implementation of the IEP.

### **HCPS Representative Responsibility**

The LEA shall ensure that the ARC for each child with a disability includes a representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, and is knowledgeable about the general curriculum and the availability of the resources of the LEA.

707 KAR 1:320 Section 3 (1) (d)  
34 CFR 300.321 (a) (4)

The HCPS Representatives must:

1. be qualified to provide or supervise the provision of special education to meet the unique needs of children with disabilities;
2. be knowledgeable about the general curriculum;
3. be knowledgeable about the availability of resources of the public agency; and
4. is not a teacher of the child or youth.

The HCPS Representative or designee ensures:

1. due process and procedural safeguards are followed;
2. the student representative is determined;
3. appropriate committee composition as documented by signatures on Conference Summary;
4. facilitation of group decision making, and if necessary makes a determination of the HCPS position when the ARC cannot agree;
5. receipt of written referrals for the ARC to review and analyze to determine if sufficient information is available for initiating a full and individual evaluation;
6. support for and implementation of ARC and IEP decisions;
7. communication with parents, notifying them of all ARC meetings;
8. information is obtained and disseminated to appropriate personnel;
9. notice of ARC meetings and contact to parents about the child's invitation to the meeting;

10. a Conference Summary recorder is designated;
11. records of conference proceedings are maintained; and
12. communication with all IEP implementers, ensuring that the IEP is accessible and they are informed regarding their specific responsibilities in implementation of the IEP.

The HCPS Representative or designee may designate other school staff committee members to assist in the implementation of these committee functions or procedures.

### **Special Education Teacher Determination and Responsibilities**

The LEA shall ensure that the ARC for each child with a disability includes at least one special education teacher of the child, or, if appropriate, at least one special education provider of the child.

707 KAR 1:320 Section 3 (1) (c)  
34 CFR 300.344 (a) (3)

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

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

The Special Education Teacher:

1. assists in maintaining records of meeting procedures;
2. assists in conducting necessary evaluations of referred child;
3. assists the committee in determining eligibility of child for a program for exceptional children;
4. brings to the meeting statements of levels of educational performance, proposed goals, objectives/benchmarks, and specially designed instruction for the child;
5. facilitates the development of the IEP;
6. ensures 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;
7. assists in communication with all IEP implementers, ensuring that the IEP is accessible and they are informed regarding their specific responsibilities in implementation of the IEP; and
8. summarizes and reviews the child's progress and facilitates the revision of the IEP at the annual review meeting.

### **Regular Education Teacher**

The LEA shall ensure that the ARC for each child with a disability includes 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 (1) (b)  
34 CFR 300.321 (a) (2)



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

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

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

The HCPS Representative or designee 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:

1. currently teaches the child;
2. initiated the referral;
3. can appropriately address the performance of the child in the general education program; or
4. will teach the child who is transitioning from one educational setting or program to another.

The regular education teacher is a member of the ARC if the child is, or may be, participating in the regular education environment. In circumstances where instruction is provided by more than one regular education teacher, HCPS requires only one teacher to attend the ARC meeting. The regular education teacher who serves as a member of the ARC should be the teacher who is, or may be, responsible for implementing a portion of the IEP. If the child has more than one regular education teacher responsible for implementing a portion of the IEP, the HCPS Representative or designee 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 HCPS Representative or designee ensures each teacher is informed about the IEP prior to implementation.

The HCPS Representative or designee solicits written comments or input from teachers who work with the child, but whose attendance is not required at ARC meetings.

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

The Referring Teacher/Regular Education Teacher:

1. submits written referral to HCPS Representative or designee;
2. designs, implements, and documents results of interventions and strategies in the regular education setting designed to address student problems;
3. assists in the determination of positive behavioral interventions and strategies for the child;
4. brings to the meeting statements of levels of educational performance as related to the Program of Studies and Core Content for Assessment;
5. assists in the development of the IEP, including determination of supplementary aids and services, program modifications or supports for school personnel to be provided for the child;
6. implements the IEP as appropriate; and



7. provides input on child's progress (maintaining monitoring data if appropriate) and the development and revision of the IEP.

### **Person Who Can Interpret Instructional Implications of Evaluation**

The LEA shall ensure that the ARC for each child with a disability includes an individual who can interpret the instructional implications of evaluation results, who may be a member of the team.

707 KAR 1:320 Section 3 (1) (e)  
34 CFR 300.321 (a) (5)

The HCPS Representative or designee arranges for a member of the multidisciplinary evaluation team, or other knowledgeable person who can interpret the instructional results of the evaluation, to attend the ARC meeting.

The person who can interpret evaluation:

1. provides information regarding needed areas of assessment;
2. assists in explaining assessment procedures;
3. interprets the instructional implications of evaluation results; and
4. provides input into the development and implementation of the IEP.

### **Additional ARC Members When a Child is Suspected of a Specific Learning Disability**

If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include the personnel listed in 707 KAR 1:310 Section 2 (1), in addition to the personnel listed in 707 KAR 1:320 Section 3.

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

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

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

If a child is being assessed for a Specific Learning Disability, the ARC includes other professionals relative to the area(s) of concern. This may include a school psychologist, speech-language pathologist, or educational specialist.

### **Related Services Personnel**

The LEA shall ensure that the ARC for each child with a disability includes related services personnel, as appropriate;

707 KAR 1:320 Section 3 (1) (g)  
34 CFR 300.321 (a) (6)

Related service personnel may include, but is not limited to speech and language pathologists, physical or occupational therapists, adaptive physical education providers, assistive technology providers, counselors or psychologists, bus drivers, or transportation directors.

If the child's evaluation indicates the need for a specific related service, or a child has been receiving a related service, the HCPS Representative or designee ensures that a qualified provider of that service attends the ARC meeting, or provides a written recommendation (see procedures for **Excusal From ARC Meetings in Evaluation** procedures) concerning service to be provided as related to goals, benchmarks/objectives, and specially designed instruction according to **Developing The Individual Education Program** in procedures for IEP.

### **Child with a Disability**

The LEA shall ensure that the ARC for each child with a disability includes, if appropriate, the child.  
707 KAR 1:320 Section 3 (1) (h)  
34 CFR 300.321 (a) (7)

The HCPS Representative or designee invites the child to the ARC meeting:

- when the child is emancipated,
- if the child is in 8<sup>th</sup> grade or has reached the age of fourteen (14) in order to discuss transition planning, and
- when deemed appropriate by the ARC.

### Child Age Fourteen (14) or Older

If the purpose of the ARC is to discuss transition services for a child with a disability as described in 707 KAR 1:320 Section 4 (3) & (4), the child shall be invited to the ARC.  
707 KAR 1:320 Section 3 (4), Section 4 (3-4)  
34 CFR 300.321 (b) (1)

The HCPS Representative or designee invites the youth 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 the purpose of the meeting is the consideration of transition service needs. The invitation to the parent shall indicate that the child is invited and that one of the purposes of the meeting is the planning of transition services.

For a child with a disability, beginning no later than the IEP that will be in effect when the child turns sixteen (16), the invitation shall state that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the child and shall include the identify 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)

The HCPS Representative or designee invites the child who is sixteen (16) years of age or younger to participate in the ARC meeting if a purpose of the meeting is the consideration of post-school transition services. The invitation to the parent indicates that the child is invited and that one of the purposes of the meeting is the planning of transition services, and the identity of any other agency that is invited to send a representative. 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 HCPS shall take other steps to obtain participation of the other agency in the planning of any transition services.

If a child elects not to attend the ARC meeting where post-school transition services are discussed, the child's teacher takes steps to ensure that the child'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 Age Appropriate Assessments for Transition Purposes in procedures for **IEP**.

### Child Age Eighteen (18) to Twenty-one (21)

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

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

In the case of a student who is age 18 or older (see **Rights of the Eligible Student** in procedures for **Confidentiality**) the HCPS Representative or designee sends the notices of ARC directly to the student. The HCPS shall notify the child with a disability and the parents of the transfer of the rights, unless the child has been declared incompetent in court of law.

### **Other Individuals Knowledgeable about the Child at Discretion of Parent or HCPS**

The LEA shall ensure that the ARC for each child with a disability includes an individual who has knowledge or special expertise regarding the child at the discretion of the parent or the LEA.

707 KAR 1:320 Section 3 (1) (f)  
34 CFR 300.344 (6)

The HCPS or the parent may invite other individuals knowledgeable about the child who may participate in the conference upon request of HCPS or the parent, sharing their knowledge or expertise, and provide input into the development of the IEP.

### **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 emancipate adult. If the representative of the other public agency does not attend, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

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

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 HCPS shall take other steps to obtain participation of the other agency in the planning of any transition services.

Agency representatives:

1. provide information about services of the agency and any issues of eligibility for service;
2. coordinate with school staff and suggest any needed areas of instruction; and

3. begin the process for service delivery.

### 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)

HCPS obtains written parental consent before disclosing personally identifiable information to individuals or agencies other than those indicated on the disclosure without consent list. The Consent for Release of Information form provided by the HCPS is available in the Principal's Office of the school the child attends and in the office of the DoSE. Copies of the completed forms are maintained in the educational records of the specific child.

### **Early Childhood Transition Planning**

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

707 KAR 1:320 Section 3 (6)

34 CFR 300.321 (f)

The HCPS Representative or designee invites the child's previous early intervention program provider to participate in the ARC meeting if a purpose of the meeting is the transition from early intervention services to preschool. See also **Preschool Transition** in procedures for **IEP**.

### **EXCUSAL FROM ARC MEETINGS**

A member of the ARC team may be dismissed from attendance, in whole or in part, if the parents and the LEA agree in writing prior to the ARC meeting that the attendance of that member is not necessary because the member's 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)

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

- (a) the parent and the LEA consent in writing to the excusal; and
- (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)

Prior to the ARC meeting, the HCPS Representative or designee selects the appropriate members to invite as related to the purpose of the meeting (according to **ARC Membership** in procedures for **Procedural Safeguards**). The HCPS

Representative or designee notifies all members (according to **Notice of ARC Meetings** in procedures for **Procedural Safeguards**) to attend the ARC Meeting.

If a member of the ARC cannot attend the meeting, or the attendance of the member is not necessary for the purpose of the ARC, the committee member may be excused from the ARC meeting if:

- a) the parent(s) and HCPS mutually agree;
- b) the decision is documented in writing; and
- c) the determination is made prior to the ARC meeting.

If the ARC member being dismissed has an area of curriculum or related service that will be discussed or modified, the ARC member submits written input prior to the ARC meeting, that will be included and discussed during the meeting.

## **NOTICE OF ARC MEETINGS**

### **Written Notice of ARC Meetings**

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

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

- (a) the purpose;
- (b) time;
- (c) location of the meeting;
- (d) who will be in attendance;
- (e) notice that the parents may invite people with knowledge or special expertise of the child to the meeting; and
- (f) notice that the LEA will invite representatives from the early intervention program to the initial meeting, if the parents request it.

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

The HCPS Representative or designee sends a written Notice of ARC to the parent and each member of the ARC at least seven (7) calendar days before the ARC meeting. HCPS has a Notice of ARC form that contains the components listed above.

If a parent brings an attorney to represent their child during an ARC, and did not previously inform the HCPS Representative or designee, the HCPS Representative or designee may reschedule the ARC meeting or remind parents the ARC may proceed without attorneys.

The HCPS Representative or designee informs the parent and their attorney that HCPS is represented by legal counsel in this matter, and gives them the name of the board attorney and the name of the firm. This prohibits the parent's attorney from direct contact with staff, without the board attorney present.

### **Content of ARC Notice**

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

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

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

The HCPS Representative or designee invites the student aged fourteen (14) or older, or a child who is younger but determined appropriate by the ARC, to attend the meeting when a purpose of the ARC is to discuss transition needs or services.

### **Notice of ARC Meeting When There is a Safety Issue or Violation of Code of Conduct**

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

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

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

On the date the decision is made to pursue a disciplinary change of placement, the HCPS Representative or designee sends the parent a notice of the proposed disciplinary action according to HCPS Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **Notice of ARC Meetings in Procedural Safeguards**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due to a violation of the Student Code of Conduct.

### **Parent Participation**

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

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

The HCPS Representative or designee sends a copy of the Notice of ARC to the parent at least seven (7) calendar days before an ARC meeting. The HCPS Representative or designee works with the parent(s) to schedule the meeting at a mutually agreed upon time and place.

### Methods to Ensure Parent Participation

An LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.

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

If the parent is unable to attend, the HCPS staff ensure parent participation in ARC meetings by arranging for the parent to participate by telephone, video conference, or other methods.

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

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

If the parent's native language is other than English or if a different mode of communication is used, the HCPS Representative or designee arranges for translating, transcribing, or recording the meeting.

### Conducting the ARC Meeting Without a Parent

An ARC meeting may be conducted without the parent in attendance if the LEA is unable to convince the parent that they should attend. The LEA shall have a record of its attempts to arrange a mutually agreed on time and place, which may include:

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

707 KAR 1:320 Section 4 (6)  
34 CFR 300.322 (d)

HCPS personnel keep detailed records including the date, time, and name of the person attempting the contact. The records, copies of any correspondence sent to the parent, and any response received, are filed in the child's special education record.

HCPS conducts ARCs without the parent in attendance if there is verification that the parent knows about the ARC meeting (i.e., there is a minimum of two (2) attempts to contact the parent).

### Conversations and Non-ARC Meetings without Parent Present

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

- (a) teaching methodology;
- (b) lesson plans;
- (c) coordination of service provision; or
- (d) preparatory activities that HCPS 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)

HCPS staff may have discussions regarding the methodology, lesson plans, service coordination, and activities regarding children with and without disabilities. These discussions, which may or may not be pre-arranged, are not meetings for which parents receive notice and the opportunity to attend.

### Electronic Notices

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, if the public agency makes that option available.

34 CFR 300.505

HCPS posts the Procedural Safeguards (i.e., Parent Rights) Notice and the Request for Due Process Hearing on the HCPS website.

The parent may request to receive written notices by electronic means. The HCPS Representative or designee documents this in the student's special education folder.

### **ADMISSIONS AND RELEASE COMMITTEE MEETINGS**

An LEA shall ensure that each child has an ARC which includes the membership in 707 KAR 1:320 Section 3 and 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)

Each ARC follows due process procedures to make sure that students and their parents are guaranteed procedural safeguards. The ARC meets to:

1. Act on referrals according to procedures for **Evaluation** including:
  - a. reviewing a written referral;
  - b. determining the need to evaluate; and
  - c. obtaining written parental consent to evaluate.
2. Act on evaluation according to procedures for **Evaluation and Eligibility** including:
  - a. determining that a full and complete evaluation is conducted; and
  - b. determining if the child meets eligibility requirements for an educational disability.
3. Develop, review, or revise an IEP according to procedures for **IEP** including:
  - a. ensuring that the IEP meets regulatory requirements; and
  - b. reviewing and revising the IEP at least annually or as requested by any ARC member.
4. Determine placement according to procedures for **Placement in the Least Restrictive Environment** including:
  - a. determining placement in the least restrictive environment;
  - b. determining placement at least annually, or as the IEP is revised;
  - c. proposing or refusing to provide services based on the current and complete IEP in the place determined;
  - d. determining the need for written parental consent for services; and



- e. ensuring that services are provided according to procedures for **Implementation and Service Delivery**.
- 5. Act on reevaluation according to procedures for **Evaluation and IEP** including:
  - a. ensuring that a reevaluation is conducted at least every thirty-six (36) months, or as requested by any ARC member;
  - b. reviewing the individual evaluation information;
  - c. determining if the child continues to meet eligibility for a disability and
  - d. proposing or refusing continuation or change in placement.

At the beginning of each ARC meeting, the HCPS Representative or designee describes the ARC process which may include the following:

1. The purpose(s) of the ARC meeting.
2. ARC members discuss and consider information brought by any member, including parents, before any group decision is made.
3. For each piece of information presented, the ARC members use consensus to decide whether or not the information is adequate or if more information is needed.
4. The issues discussed and reasons for the decisions are written in the Conference Summary.

## **NOTICE OF PARENTAL PROCEDURAL SAFEGUARDS**

### **Written Notice of Parental Procedural Safeguards (Parent Rights)**

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

- (a) upon initial referral or parent request for evaluation;
- (b) upon 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)

The HCPS Representative or designee provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:

- (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.

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

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

Upon discovery of any errors on the IEP, the ARC member who finds the error notifies the HCPS Representative or designee that changes need to be made. The HCPS Representative or designee allows minor, non-programmatic changes to an IEP to include:

- a. typographical errors;
- b. incorrect directory information about the student (i.e., birth date, age, grade, address, school, etc.); and
- c. other information required on the IEP that was agreed upon by the ARC but incorrectly recorded or failed to document (e.g., beginning/ending dates, amount of time for services, type of service, etc.).

Within ten (10) days of the changes, the HCPS Representative or designee provides to all ARC members a copy of the changes and an explanation of why they were made. If any ARC member disagrees, the member requests an ARC meeting to discuss the changes.

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

May IEP meetings be audio- or video-tape-recorded?

The LEA has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.

34 CFR Part 300 Appendix A, Q. 21

HCPS has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at ARC meetings. The HCPS Representative or designee, in consultation with the DoSE, determines, on a case-by-case basis, the HCPS decision when a request is made for audio or video recording of any ARC meeting.

If parents can demonstrate that recording the ARC meeting is necessary to their participation and understanding of the proceedings, then HCPS takes necessary action to ensure the parents understand the ARC meeting.

Any recording of an ARC meeting that is maintained by the HCPS 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, Confidentiality. The HCPS Representative or designee ensures that any such recording is maintained as a part of the child's special education record and the parent is granted access to the recording.

### **Written Notice of Proposed or Refused Action (Conference Summary)**

KLEA has a Notice of Proposed or Refused Action (i.e., Conference Summary form) that includes all necessary components as follows.

The notice required for 707 KAR 1:340 Section 3 (1) shall include:

- (a) a description of the action proposed or refused by the LEA;
- (b) an explanation of why the LEA proposes or refuses to take the action;
- (c) a description of any other options the LEA considered and the reasons why those options were rejected;
- (d) a description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;
- (e) a description of any other factors that are relevant to the LEA's proposal or refusal;
- (f) a statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 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 provision of this section.

707 KAR 1:340 Section 3 (3)

34 CFR 300.503 (b)

The HCPS Representative or designee gives the parents a copy of the Conference Summary each time HCPS proposes or refuses to initiate, continue, or change the identification, evaluation, or placement of the child or provision of a free appropriate public education to a child.

The HCPS Representative or designee mails a copy of the Conference Summary, with a copy of a proposed IEP, if applicable, to parents who did not attend the meeting. If the parent agrees with the ARC decision(s), the proposed action as described is implemented. If the parent was not present at the meeting, the school initiates the action described in the Conference Summary.

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

- (a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

707 KAR 1:340 Section 3 (1) & (2)

34 CFR 300.503 (a)

On the date the decision is made to pursue a disciplinary change of placement, the HCPS Representative or designee sends the parent a notice of the proposed disciplinary action according to HCPS Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **Notice of ARC Meetings in Procedural Safeguards**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due to a violation of the Student Code of Conduct. See also **Change in Placement for Disciplinary Removals** in procedures for **Discipline**.

#### Notices in Native Language or other Mode of Communication

The notice required by 707 KAR 1:340 Section 3 shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA

shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of this translation.

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

The HCPS Representative or designee determines the language or mode of communication used by the parent of the child and provides notice in that language or mode of communication 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 or mode of communication is not English, the HCPS Representative or designee informs the DoSE of the need for a translation or interpretation of the notice. The DoSE makes sure:

1. that the notice is translated to the parent in his native language or other mode of communication; and
2. that there is written evidence of the translation.

If HCPS can not obtain a translated form, the DoSE contacts the Kentucky Department of Education for support in obtaining the translations.

The DoSE obtains the necessary translation or interpretation. The DoSE maintains copies of all letters of correspondence involved in securing the necessary interpretation or translation of a notice, and a copy of the translation.

## **PARENTAL CONSENT**

An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.

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

Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. The HCPS must make reasonable efforts to obtain these consents. To show the reasonable efforts made, the HCPS shall keep documentation, which may include:

- (a) detailed records of the telephone calls made or attempted and the results of those calls;
- (b) copies of correspondence sent to the parents and any responses received; and
- (c) detailed records of the visits made to the parent's home or place of employment and the results of those visits. The appropriate HCPS Representative shall document attempts to obtain parental consent, which may include attempts to obtain parental consent through any of the means described in a, b or c above. The HCPS Representative maintains documentation of these attempts in the child's special education records.

The HCPS Representative or designee makes sure that the parent of the child gives voluntary informed consent by reviewing the information with the parent and giving the parent of the child time to consider the request for consent.

### **Consent for Initial Evaluation**

The HCPS Representative or designee obtains written parental consent before conducting an initial evaluation to determine if the child has a disability and needs special education and related services.

The HCPS Consent for Evaluation Form and the Evaluation Planning Form includes the areas related to the suspected disability, (e.g., health, vision and hearing, motor abilities, social and emotional, general intelligence, academic performance, and communication status).

The written consent statement includes a place for the date and the parent's signature and states that the parent understands and agrees:

1. to a full and individual evaluation of the child in all areas related to the suspected disability by the multidisciplinary team; and
2. consent is given voluntarily.

The HCPS Representative or designee gives a copy of the Consent for Evaluation and the Evaluation Planning Form to the parent with the Conference Summary.

Parental consent shall not be required before:

- (i) reviewing existing data as part of an evaluation or a reevaluation; or
- (ii) 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)

### 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 LEA may pursue the initial evaluation by using the procedures in this section (707 KAR 1:340) for mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

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

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

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

The appropriate HCPS Representative shall document the parent refusal or failure to respond.

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

- (a) the HCPS may not use the consent override procedures of the law in an attempt to force the evaluation, and
- (b) The HCPS is not required to consider the child as eligible for services under 34 CFR. §§ 300.132 through 300.144.

If the parent denies consent for an initial evaluation, the HCPS Representative or designee contacts the DoSE regarding the refusal. When parent and HCPS personnel disagree on consent for initial evaluation, the parties may request mediation, or either party may request a dispute resolution meeting or a due process hearing to obtain consent for the proposed evaluation (according to **Mediation, Dispute Resolution, and Due Process Hearing** in procedures for **Procedural Safeguards**).

Consent When the Child is in the Custody of the State or Foster Child

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

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

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

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

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

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

HCPS does not require parental consent for initial evaluations for children who are in the custody of the state or who are in foster care when:

- a. despite reasonable efforts, HCPS cannot discover the whereabouts of the parent(s);
- b. the rights of the parent(s) have been terminated by a court of competent jurisdiction, which is on file in the student record; or
- c. HCPS discovers that the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction, HCPS personnel ask the individual appointed by the court to represent the child to give consent for the initial evaluation.

The HCPS Representative or designee follows procedures for **Representation of Children in Procedural Safeguards**.

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

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

(b) copies of correspondence sent to the parents and any responses received; and  
(c) detailed records of 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)

HCPS personnel keep detailed records including the date, time, and name of the person attempting the contact. The records, copies of any correspondence sent to the parent, and any response received, are filed in the child's special education record.

HCPS conducts ARCs without the parent in attendance if there is verification that the parent knows about the ARC meeting (i.e., there is a minimum of two (2) attempts to contact the parent).

### **Consent for Reevaluation**

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

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

Parental consent for reevaluation shall not be required if the LEA can demonstrate that:  
(a) it made reasonable efforts to obtain such consent, and followed the procedures in 707 KAR 1:340 Section 5 (4) to show those efforts; and  
(b) the parent failed to respond.

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

If the parent does not respond to the consent for proposed reevaluation, the HCPS Representative or designee makes sure that attempts to obtain the consent are documented. If there are three (3) attempts to obtain the consent for the reevaluation with no success, the HCPS Representative or designee notifies the evaluation personnel to complete the evaluation.

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

The HCPS Representative or designee obtains written informed parental consent prior to the time a child receives special education and related services. HCPS uses a Consent for Special Education and Related Services form that includes a place for the date and the parent's signature and states that the parent understands and agrees:

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

The request for Consent for Special Education and Related Services is accompanied by the Conference Summary.



Once the parent gives consent for a child with a disability to receive special education and related services, HCPS does not require any additional consent from the parent of the child for placement to continue to receive special education and related services. Additional consent to provide services is not needed, 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 (ARC Meeting and Conference Summary) but not subject to parental consent.

### Denial or Revocation of Parent Consent for Services

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

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

If the parent denies or fails to respond to a request for consent for provision of services, the HCPS Representative or designee contacts the DoSE regarding the refusal. HCPS does not “override refusal to consent to the initial provision of special education and related services”, therefore, does not request mediation or a due process hearing.

If consent is revoked, the DoSE and the building principal make sure that the child remains in the present educational placement during any due process hearings and appeals unless the parent and the ARC agree otherwise (according to **Child Status during Pendency of Judicial Proceedings** in procedures for **Procedural Safeguards**).

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

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

707 KAR 1:340 Section 5 (9)  
34 CFR 300.300 (b) (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).

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

HCPS obtains written parental consent before disclosing personally identifiable information to individuals or agencies other than those indicated on the disclosure without consent list. The Consent for Release of Information form provided by the



HCPS is available in the Principal's Office of the school the child attends and in the office of the DoSE. Copies of the completed forms are maintained in the educational records of the specific child.

## REPRESENTATION OF CHILDREN

The HCPS Representative or designee makes sure that each child is represented by verifying the location, legal status and availability of parents or guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child, or the provision of a free appropriate public education.

"Parent" means:

- (a) a biological or adoptive parent of a child;
- (b) a guardian generally authorized to act as the child's parent, or authorized to make educational decision for the child, but not the state if the child is a ward of the state;
- (c) a person acting in the place of a biological or adoptive parent such as a grandparent, stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare;
- (d) a foster parent if the biological or adoptive parents' authority to make educational decisions on the child's behalf has been extinguished and the foster parent has an on-going, long-term parental relationship with the child, 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;
- (e) a foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or
- (f) a surrogate parent who has been appointed in accordance with 707 KAR 1:340 Section 6.

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

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

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

### Determination of Representative

No later than at the time of referral, the HCPS Representative or designee, through a review of the records of the child, determines if a child is:

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

### Biological or Adoptive Parents

Either parent, biological or adoptive, 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 HCPS Representative or designee.

If no parent is in residence, the HCPS Representative or designee obtains the name and address of either natural parent, or any documents affecting the parent's legal status regarding educational decision-making including informal arrangements or the result of a State agency or court action.

In the case of divorced parents who have joint legal custody, the HCPS Representative or designee will notify both parents of ARC meetings. After reasonable attempts to notify and schedule a mutually agreed upon time, the ARC will convene. In the case of a divorced parent that has sole legal custody, that parent may make decisions without the other parent present or offering input.

### Legal Guardian

If the child is represented by a legal guardian, the HCPS Representative or designee obtains a copy of the court order determining the legal guardianship. The HCPS Representative or designee places a copy of the court order in the educational record of the child.

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 HCPS Representative or designee 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 who can produce a court order that he or she has been granted guardianship of the child. Unless the person can produce a court order that he or she is a private (as opposed to state-appointed) guardian, such a person may not represent the child (e.g., sign permission or other due process forms) and, absent written parental permission, is not allowed access to the educational records of the child.

### Person Acting As a Parent

If the HCPS Representative or designee determines there is no parent available and the person with whom the child resides is a family member, friend, or other person with whom the parent has made an informal arrangement to care for the child without state agency or court intervention, the HCPS Representative or designee determines this is a person "acting as a parent" and as such has all the rights of a parent until the parent reappears to reclaim his or her rights.

A person "acting as a parent" is a relative of the child or a private individual allowed to act as the parent of a child by the natural parents or guardians. For example, a grandparent, neighbor, governess, friend, or private individual caring for the child with the written approval of the parent or guardian of the child or court document would qualify as a "person acting as a parent".

### Commitment to CFC or DJJ when Parental Rights are not Terminated

If the child has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice and parental rights have not been terminated, the HCPS Representative or designee involves the biological or adoptive parent in education decision-making and no surrogate parent is assigned.

### Commitment to CFC or DJJ when Parental Rights are Terminated

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

707 KAR 1:280 Section 1 (66)

If the HCPS Representative or designee determines that the child is a ward of the State (i.e., parental rights have been terminated by the court), the HCPS Representative or designee immediately contacts the DoSE and obtains a copy of the court order verifying that the child is a ward of the State. The HCPS Representative or designee files the copy of the court order into the educational record of the child. The DoSE appoints a surrogate parent.

In instances that involve protective custody of the child, CFC may inform the HCPS Representative or designee that parents must not be provided information regarding the whereabouts of their child. In such cases, the HCPS Representative or designee requires that the CFC representative provide HCPS a court order that prohibits parent involvement with the child. A copy of the order is filed in the child's records, and the DoSE appoints a surrogate because the child's parents are unavailable.

### Foster Parent

The HCPS Representative or designee verifies that the child resides in a foster home or is otherwise in custody of a State agency.

If the child is placed with foster parents, the HCPS Representative or designee determines if parental rights have been terminated. If parental rights have not been terminated, the HCPS Representative or designee follows the procedures for **Representation of Children in Procedural Safeguards, Natural or Adoptive Parents or Legal Guardian**. If no parent is known, their whereabouts cannot be determined, or parental rights have been terminated, the DoSE may assign the foster parent as a surrogate parent in accordance with procedures.

In the event parent's rights have been terminated, the foster parent may act as parent without the need for appointment as surrogate parent under the following conditions:

1. the foster parent has an on-going, long-term parental relationship with the child;
2. the foster parent is willing to make the educational decisions required of parents under special education regulations; and
3. the foster parent has no interest that would conflict with the interests of the child.

### Age of Majority

When a child with a disability reaches the age of majority (age eighteen), all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent

under KRS Chapter 387 in a court of law. An LEA shall notify the child with a disability and the parents of the transfer of the rights.

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

HCPS personnel assume the youth is considered able to make informed decisions at age eighteen unless the parent provides the school with a court order declaring the student legally incompetent or the student voluntarily agrees to allow the parent to continue to have educational decision making authority.

## **Surrogate Parent**

An LEA shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

- (a) no individual can be identified as a parent as defined in 707 KAR 1:280;
- (b) an LEA, after reasonable efforts, 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)

An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 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)

If the HCPS Representative or designee determines the child is represented by a parent or legal guardian, no surrogate is needed. The DoSE does not assign a surrogate parent to an emancipated individual.

The HCPS Representative or designee notifies the DoSE that a surrogate parent may be needed when:

1. no one can be identified who meets the criteria of "parent";
2. a parent is identified but efforts, including registered mail to the last known address, fail to locate the parent; or
3. the child is a ward of the State (i.e., all parental rights have been terminated by a court of competent jurisdiction); or
4. the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act.

The HCPS Representative or designee contacts 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 HCPS Representative or designee informs the DoSE that there is no caregiver or relative eligible and willing to serve as surrogate, the DoSE selects a surrogate to serve as the educational representative for the child.

## 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 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)

If the student is an unaccompanied homeless youth, the DoSE attempts to identify the student representative according to the **Determination of Representative** in procedures for **Procedural Safeguards**.

The HCPS Representative or designee, in consultation with the DoSE, may assign staff from the emergency or transitional shelters, independent living programs, or outreach programs to act as a *temporary* surrogate parent until the DoSE can arrange for the assignment of a surrogate parent who meets all of the required criteria.

#### Criteria for Selection of Surrogate Parent Volunteers

An LEA shall have a procedure for selecting surrogates. A surrogate:

- (a) shall not be an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;
- (b) shall not have any personal or professional interest that conflicts with the interests of the child; and
- (c) shall have knowledge and skills that ensure adequate representation of the child.

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

After determining if a child needs a surrogate parent, the DoSE selects surrogate parents based on the following:

1. the person is not an employee of the Kentucky Department of Education, the HCPS, or any other public agency that is involved in the education or care of the child;
2. the person does not have an interest that conflicts with the interests of the child;
3. the person has knowledge and skills that ensure adequate representation of the child.

A conflict of interest exists when it appears that the person being considered:

1. might benefit personally or professionally from decisions regarding the child; or
2. might be recruited to make decisions which might affect policy in which the person has a personal or professional interest.

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

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

The DoSE may solicit recommendations from HCPS staff members, the local Association for Retarded Citizens (AIM - Advocacy In Motion), and CFC, and contacts foster parents as appropriate.

The DoSE maintains a list of people who are willing to serve as Surrogate Parents. The DoSE reviews and updates the list annually.

## Assignment of Surrogate Parent Volunteers

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

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

Not more than thirty (30) days after the determination that a child needs a surrogate parent, the DoSE selects a surrogate parent and asks the surrogate to sign a statement of commitment and acceptance. The commitment reads as follows: "I will:

1. acquaint myself with the child and his or her educational needs;
2. be accessible to the child and school personnel as needed;
3. represent the educational interests of the child to the best of my ability;
4. have no other vested interests that would conflict with my allegiance to the child; and
5. keep confidential the information in the educational records of the child."

Upon receipt of the individual's signed indication of willingness to serve as surrogate, the DoSE enters the name and address of the surrogate in the educational record of the child and informs the HCPS Representative or designee that a surrogate has been selected.

## Surrogate Parent Training

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

1. the role of the surrogate parent;
2. the rights and responsibilities of parents of children with disabilities;
3. available resources for additional information and assistance;
4. procedures to follow to be excused from appointment when there is a possibility of a potential conflict of interest;
5. conditions for termination as a surrogate; and
6. notification that the surrogate has the right to represent the child in all matters related to the educational rights of the child.

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)

The HCPS Representative or designee and DoSE make sure that the surrogate parent assigned to a child represents the child in all decision-making processes including, identification, evaluation, placement, and the provision of FAPE.

## Termination of a Surrogate Parent Assignment

The DoSE determines the surrogate is no longer needed according to the following criteria:

1. the "parent" becomes known or is located;
2. upon emancipation of the youth;

3. the surrogate no longer meets the qualifications and criteria for being a surrogate parent; or
4. the surrogate is not fulfilling his or her responsibilities.

The DoSE 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 DoSE.

## STATE COMPLAINT PROCEDURES

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

- (a) upon initial referral or parent request for evaluation;
- (b) upon 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)

The HCPS Representative or designee provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:

- (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.

## Right to File a Complaint

Any organization or individual including someone from outside the state may file a signed written complaint under 707 KAR 1:340 Section 7.

707 KAR 1:340 Section 7 (2)  
34 CFR 300.153 (a)

(3) The complaint shall include:

- (a) a statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 Chapter 1 or IDEA regulations;
- (b) the facts on which the statement is based;
- (c) a signature and contact information for the complainant;
- (d) name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Section 11431;
- (e) name of the school the child is attending;
- (f) a description of the nature of the problem, including facts related to the problem;
- (g) a proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and
- (h) information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

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



The right to file a complaint with the Kentucky Department of Education and 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.

### Procedures for Addressing the Complaint

The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 CFR 300.151 through 300.153:

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

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

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)

When the DoSE receives written notice from KDE of any complaint filed, the DoSE informs the Superintendent. The DoSE and the Superintendent decide if the district will conduct its own investigation or provide KDE/DECS with the relevant documents and allow KDE/DECS to conduct the investigation.

### Right to Appeal Written Decision from KDE/DECS

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

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

### Implementation of Final Decision

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

- (a) technical assistance activities;
- (b) negotiations; or
- (c) corrective actions.

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



## MEDIATION PROCESS

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

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

The mediation process, if chosen, shall:

- (a) be voluntary;
- (b) not be used to deny or delay a parent's right to a due process hearing under 707 KAR 1:340 Section 8 and Section 11 or 34 CFR Section 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and
- (c) be conducted by a qualified and impartial mediator trained in effective mediation techniques.

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

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

- (a) not be an employee of: the Kentucky Department of Education or the LEA that is involved in the education or care of the child;
- (b) be chosen at random for the mediation process; and
- (c) not have a personal or professional conflict of interest.

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

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)

The sessions in the mediation process shall be:

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

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

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

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

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

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

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

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

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

HCPS may offer mediation to a parent as an option to settle differences concerning the identification, evaluation, educational placement, or the provision of a free appropriate public education. The HCPS Representative or designee or DoSE explains to the

parent that mediation is not a required process, but is offered by HCPS to settle differences or when a due process hearing is requested. If the parents and HCPS agree to mediate the issue, HCPS and the parent jointly submit a written request to KDE for mediation.

HCPS uses the procedures and forms in the Kentucky Department of Education's Special Education Procedure Manual, November 2000 and Mediation for Students with Disabilities, November 1999 to begin the process for mediation.

## DISPUTE RESOLUTION

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

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

Within fifteen (15) days of receiving notice of a parent request for a due process hearing, the DoSE and Superintendent contact the Board Attorney to schedule a meeting with the parent. The DoSE and the parent(s) determine the HCPS personnel who have knowledge about the facts as identified in the due process hearing request, and the DoSE arranges for the staff to attend the meeting. The HCPS Board Attorney does not attend the meeting unless the parent is requesting the attendance of their attorney.

The purpose of this meeting is:

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

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

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

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

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

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

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

The DoSE places a copy of the resolution in the student's special education record.

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)

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

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

The timeline for issuing a final decision pursuant to 34 CFR 300.515 shall 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)

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

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

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

If the parent refuses to participate in the resolution process, the timelines for the process and hearing are delayed. If HCPS can not obtain the participation of the parent in the resolution process, HCPS Board Attorney notifies the due process hearing officer of the parent's failure to participate.

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

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of 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)

HCPS personnel keep detailed records including the date, time, and name of the person attempting the contact. The records, copies of any correspondence sent to the parent, and any response received, are filed in the student's special education record.

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

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

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

- (a) both parties agree in writing to waive the resolution meeting;
- (b) after either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or
- (c) if both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later that parent or the LEA withdraws from the mediation process.

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

## DUE PROCESS HEARING

HCPS or a parent may initiate a due process hearing on any matter concerning the identification, evaluation, placement or provision of a free appropriate public education.

A parent or an LEA may initiate a due process hearing on any of the matters described in the written notice relating to identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child or 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)

When a hearing is initiated, the LEA 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)

HCPS or a parent may initiate a due process hearing on any matter concerning the identification, evaluation, placement or provision of a free appropriate public education.

The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or LEA initiates a hearing.

707 KAR 1:340 Section 8 (4)  
34 CFR 300.506 (a)

If a parent initiates a due process hearing or requests the information, the HCPS Representative or designee provides the parent a list of free or low-cost legal and other relevant services available in the HCPS area.

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

- (a) upon initial referral or parent request for evaluation;
- (b) upon 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)

The HCPS Representative or designee provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:

- (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.

**Note:** Hearing rights for children unilaterally placed in private schools by their parents are limited to Child Find, evaluation, and reevaluation issues. See procedures for

## Children Enrolled in Private Schools by Their Parents.

### Hearing Requests

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

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

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

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

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

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 707 KAR 1:340 Section 11 (1). 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)

The party requesting the hearing (the parent, the parent's authorized agent, or HCPS) submits "Request for a Due Process Hearing" form to the Director, Division of Exceptional Children Services, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601. If HCPS requests the due process hearing, the Superintendent and DoSE submit the hearing request. The hearing request states:

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

If, after HCPS requests a due process hearing, HCPS 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.

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)

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

707 KAR 1:340 Section 12 (1)  
34 CFR 300.510 (b) (1)

Either party involved in the hearing regarding the identification, evaluation, placement, or provision of free appropriate public education of a child with disabilities may appeal the decision of the hearing officer. 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.

### 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)

### Child Status during Pendency of Judicial Proceedings

Except as provided in 707 KAR 1:340, Sections 14 and 15, 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 LEA agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves an application for initial services for a child who is transitioning from the early intervention program into preschool and the child is no longer eligible for the early intervention program due to age. In that case, the LEA shall not be required to provide the early intervention services the child had been receiving but would be required to provide any special education and related services that the child is eligible for and that are not in dispute between the parent and the LEA.

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

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

707 KAR 1:340 Section 12 (4)  
34 CFR 300.518 (b)

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)

During the pendency of any administrative proceedings (e.g., due process hearing, appeal to the Exceptional Children Appeals Board) or judicial proceedings (i.e., civil action brought under IDEA), HCPS ensures that the child remains in the current educational placement, unless HCPS and the parent agree otherwise. In the case of a weapon offense, drug offense, or incident involving a threat to the safety of self or others, the student remains in the alternative placement until the discipline procedures are completed according to **Violations for Drugs, Weapons, or Behavior Indicating a Student is Dangerous to Self or Others** in procedures for **Discipline**. If the complaint involves a child who is transitioning from the early intervention program into preschool for initial services, HCPS provides any special education or related services the ARC agreed upon prior to the due process hearing request.

If the administrative or judicial proceedings involve an application for initial admission to public school, HCPS places the child in an age and grade appropriate placement, with the consent of the parent, until the completion of the proceedings.

## **DISCIPLINE OF CHILDREN WITH DISABILITIES**

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

### **STUDENT BEHAVIOR**

An ARC shall, in the case of a child whose behavior impedes his or her learning, or that of others, 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)

The HCPS 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. The ARC may modify or adapt the consequences utilized with all children to meet the needs of a child with a disability as documented in an IEP or a behavioral intervention plan.

### **In-School Suspension**

It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in §300.530 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. This continues to be our policy. Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in §300.536.

34 CFR 300 Part 300, Comments, p. 46715

HCPS may provide In-School Suspension (ISS) for students with disabilities who have violated school rules under the following criteria:

1. the student has the opportunity to continue to appropriately progress in the general curriculum;
2. the district continues to provide the services specified in the student's IEP; and
3. the student continues to participate with nondisabled peers to the same extent as in the student's current placement.

HCPS staff ensure that the special education and related services designed on the IEP are implemented in the ISS setting.

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

The principal or the person or persons designated by the board of education shall be responsible for the



discipline of the pupils who ride school buses. The principal shall assist the school bus driver with discipline problems which arise on the bus when the school bus driver shall make the proper report on the discipline problem either in person or in writing.

A pupil who creates a serious safety or discipline problem or persists in creating discipline problems on the school bus shall be reported to the principal or person designated by the board to handle bus discipline problems. The principal or person designated by the board shall have the authority to forbid the pupil bus riding privileges until the problem is resolved. A student whose bus riding privileges have been suspended shall 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)

If a student misbehaves on the school bus, the principal may suspend the student from the bus if:

1. the IEP does not prohibit the suspension;
2. the suspension does not result in a change of placement for the student (see **Change in Placement for Disciplinary Removals**); and
3. the behavior has not previously been determined to be a manifestation of the student's disability (see **Manifestation Determination**).

Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under §300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under §300.530. In those cases, the child and the child's parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from the bus. However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an 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 300 Part 300, Comments, p. 46715

If a student with a disability is suspended from the bus and the IEP specifies transportation as a related service, HCPS makes sure an alternative method of transportation is available. If transportation is **not** a related service, HCPS is not obligated to arrange for transportation services.

## REMOVAL FOR 10 SCHOOL DAYS OR LESS DURING A SCHOOL YEAR

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

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

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)

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

- a. the removal is for more than ten (10) consecutive school days; or
- b. the child has been subjected to a series of removals that constitute a pattern (which is determined



on a case-by-case basis) because:

1. the series of removals total more than ten (10) school days in a school year,
2. the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in a series of removals; and
3. of additional factors, including the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

707 KAR 1:280 Section 1 (8)

Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.

KRS 158.150 (8)

A student with a disability who violates a school or board policy may be suspended from school for the same amount of time as a general education student would be suspended, but may not be suspended more than a total of ten (10) school days per school year.

A student with a disability may be suspended for a total of ten (10) school days per school year without invoking any of the other disciplinary requirements, such as manifestation determination, revision of the IEP, or behavior intervention plan.

The HCPS Student Handbook outlines the due process procedures for short-term suspensions utilized for all students. HCPS does not hold an ARC meeting when suspensions are utilized as temporary disciplinary measures if the suspension is for a minor infraction and no further disciplinary action is planned. HCPS may hold an ARC meeting at any time if requested by the parent, principal, or other service provider.

(a) Day means calendar day unless otherwise indicated as business day or school day;  
(c) School day means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

34 CFR 300.11 (a) & (c)

Any portion of a school day is considered a full day. For suspension purposes, a child suspended at any time of the school day is considered suspended one full day.

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

707 KAR 1:340 Section 13 (8)

34 CFR 300.530 (d) (3)

HCPS board policy does not provide services for children with or without disabilities who are suspended for less than ten (10) school days in a school year.

After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in 707 KAR 1:340 Section 13 (6) shall be provided during any subsequent days of removal.

707 KAR 1:340 Section 13 (5)

34 CFR 300.530 (a) (2)

If a child is suspended more than ten (10) school days in the same school year, HCPS follows for **Change in Placement for Disciplinary Removals**.

## CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS

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)

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 LEA shall notify the parent 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)

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

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

On the date the decision is made to pursue a disciplinary change of placement, the HCPS Representative or designee sends the parent a notice of the proposed disciplinary action according to HCPS Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **Notice of ARC Meetings in Procedural Safeguards**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due to a violation of the Student Code of Conduct.

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

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

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. 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)

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 shall determine the appropriate educational services for the child. If the student has been placed in an interim alternative educational setting the LEA shall invite staff from that alternative setting to the ARC meeting.

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

The HCPS Representative or designee convenes an ARC meeting within ten (10) school days after a change of placement for disciplinary removals when a child is:

1. suspended for more than ten (10) consecutive school days in a school year;
2. demonstrating a pattern of behavior (see **Identifying a Pattern of Behavior** in procedures for **Discipline**); or
3. removed to an interim alternative educational setting (IAES) as a response to weapons or drug violations, or if the child has inflicted serious bodily injury upon another person see **Removal to an Interim Alternative Educational Setting**.

### **Identifying a Pattern of Removals**

The HCPS Representative, their designee and/or DoSE review the behavioral information to determine if the removal constitutes a pattern by reviewing the child's behavior in relation to the following factors:

1. Do the removals total more than ten (10) school days in a year?
2. Is the child's behavior for the current removal substantially similar to the child's behavior in previous incidents?
3. How often does the behavior occur, and at what severity?
4. How long does the behavior last?
5. How many days is the child removed from the educational setting each time?
6. What is the proximity of removals to one another?

### **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 LEA and the parent, must convene a meeting to review all relevant information in the student's file, including the child's IEP, any teacher observations, teacher-collected data, and any relevant information provided by the parents to determine:

- (a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
- (b) if the conduct in question was the direct result of the LEA's failure to implement the IEP.

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

Within ten (10) school days of the decision to change the placement of a child with a disability due to violations of the code of student conduct, the ARC conducts a manifestation determination meeting.

The ARC reviews and considers evaluation and diagnostic results, the IEP, teacher observations, teacher-collected data, any relevant information provided by the parents, and a review of the child's placement to answer the questions in relation to the disability and child's offending behavior:

1. Was the conduct caused by or does it have a direct and substantial relationship to the child's disability?
2. Was the child's conduct the direct result of HCPS' failure to implement the IEP?

### **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 (as described in Section 14 of this administrative regulation), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.

If the ARC answers "NO" to both of the questions, the behavior is *not* a manifestation of the child's disability, and the child is subject to the same disciplinary procedures as any non-disabled child. The HCPS Representative or designee notifies the Superintendent of the ARC decision. The Superintendent may recommend expulsion to the HCPS Board according to HCPS Board Policy.

If the child is to be expelled from school or will continue further removal from the child's current placement, the HCPS Representative or designee follows procedures for **Providing Services in Discipline**.

### **Behavior IS a Manifestation of the Disability**

The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either condition in 707 KAR 1:340 Section 14 (1) was met.

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

If the ARC answers "YES" to either of the questions, the behavior is a manifestation of the child's disability, and the child is not subject to further disciplinary procedures, unless the child's violation involved drugs or weapons (see procedures for **Removal to an Interim Alternative Educational Setting**).

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

- (a) 1. conduct a functional behavioral assessment unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or
2. review the behavioral intervention plan, (if one had already been developed) and modify it, as necessary, to address the behavior; and
- (b) return the child to the placement from which the child was removed unless the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in 707 KAR 1:340 Section 14 (5).

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

If the ARC determines that the condition in 707 KAR 1:340 Section 14 (1) was met, the LEA shall take immediate steps to remedy those deficiencies.

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

The ARC reviews the behavior(s) and conducts a functional behavioral assessment (FBA). Based on the FBA, the ARC:

1. develops a behavioral intervention plan (BIP);
2. reviews and revises the IEP, if appropriate; and determines appropriate educational services and placement according to procedures for **IEP and Placement In The Least Restrictive Environment**; and
3. assigns staff to implement and collect data on the BIP and IEP.

The ARC assigns staff to review data on a regular basis to determine if interventions are effective. If staff determine the data demonstrates interventions are ineffective, staff inform the HCPS Representative or designee who schedules an ARC meeting.

## PROVIDING SERVICES FOR STUDENTS REMOVED FOR MORE THAN TEN DAYS

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

- (a) continue to receive a free appropriate education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (b) receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications, that are designed to address the behavior violation so that it does not recur.

7. The services described in 707 KAR 1:340 Section 13 (6) may be provided in an interim alternative educational setting.

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

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

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

### 11<sup>th</sup> Day and Subsequent Removal Periods Determination of Change of Placement:

Before the child is removed for the 11<sup>th</sup> day in any school year and before any subsequent removals during the same school year, the building principal, and the DoSE, or designee, determine if the removal constitutes a change in educational placement. They must be in agreement that the removal is not an educational change in placement. If they do not so agree, the removal is treated as a change in educational placement

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

After making the manifestation determination, the ARC selects an educational setting, which may include an interim alternative educational setting that will enable the child to continue to:

1. receive a free appropriate public education;
2. participate in the general curriculum;
3. progress toward meeting the goals in the IEP; and
4. receive functional behavioral assessment and behavioral intervention services and modifications to address the behavior to prevent the behavior from recurring.

The Principal and/or DoSE arranges for appropriate HCPS teachers and related service personnel to provide specially designed instruction and related services for the child in the placement selected by the ARC.

HCPS does not terminate educational services for a child with a disability during any period of expulsion or long-term removal (more than ten days within one school year). The DoSE arranges for appropriate HCPS teachers and related service personnel to provide special education and related services for the student.

## REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING

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

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

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

- (a) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;
- (b) knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA; or
- (c) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.

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

The ARC may change a child's educational placement to an interim alternative educational setting (IAES) for not more than forty-five (45) school days:

1. as a response to weapons or drug violations at school, on school premises, or at a school function, regardless if the ARC determined the behavior was a manifestation of the disability; or
2. if the child has inflicted serious bodily injury upon another person at school, on school premises, or at a school function.

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)

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 provision of Federal law.

34 CFR 300.530 (i) (2)

Seriously 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)

A 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 2 1/2 inches in length.

18 USC 930 (g) (2)  
34 CFR 300.530 (i) (4)

## Parent Appeal from Placement Decisions

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

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

If the parent disagrees with the determination of the ARC that the behavior is not related to the disability, the parent may request an expedited due process hearing according to **Due Process Hearing** in procedures for **Procedural Safeguards**.

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

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

- (a) return the child to the placement from which the child was removed; or
- (b) order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others. 707 KAR 1:340 Section 15 (2-3) 34 CFR 300.532 (b).

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)

If the parent or the HCPS disagrees with the determination of the hearing officer, either party may request an appeal according to **Exceptional Child Appeals Board** in procedures for **Procedural Safeguards**.

## STAY PUT PROVISION

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

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

If a due process hearing is requested by either party regarding the manifestation determination or the interim alternative educational setting (IAES), HCPS keeps the child in the IAES until the hearing officer makes a decision, or the 45 day time period expires, unless the parent and HCPS agree otherwise.

## PROTECTION FOR CHILDREN NOT YET ELIGIBLE FOR IDEA



A child who has not been identified as having a disability according to procedures for **Evaluation and Eligibility**, 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.

### **Basis of Knowledge**

An LEA shall be deemed to have knowledge that a child is a child with a disability if:

- (a) the parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA or to the teacher of the child, that the child is in need of special education and related services;
- (b) the parent of the child has requested an evaluation pursuant to the requirements in 707 KAR 1:300; or
- (c) the teacher of the child, or other personnel of the LEA, has expressed concern about a pattern of behavior or performance of the child directly to the director of special education or to other supervisory personnel of the LEA.

707 KAR 1:340 Section 16 (1)  
34 CFR 300.534 (b)

HCPS is deemed to have knowledge that a child is a child with a disability when concerns are expressed in accordance with procedures for **Child Find** and/or the **Referral System** in procedures for **Evaluation**. HCPS has knowledge under one or more of the following circumstances:

1. The parent expressed concern in writing (or orally) to supervisory or administrative staff that the child needs special education and related services.
2. The parent requested an evaluation.
3. The teacher or other school staff expressed concern about the behavior or performance of the child to the DoSE or other supervisory personnel of HCPS.

A district shall not be deemed to have knowledge that a child may be a child with a disability if, as a result of receiving information the LEA:

- (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)

HCPS is deemed to not have knowledge that a child is a child with a disability if:

1. HCPS had conducted an evaluation and the child was not found eligible for special education services; or
2. the ARC previously had determined that an evaluation was not necessary according to procedures for **Evaluation and Eligibility**.

If an LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities.

707 KAR 1:340 Section 16 (3)  
34 CFR 300.534 (d) (1)

Before taking disciplinary measures against a child, the principal follows HCPS suspension and expulsion procedures. The principal reviews the child's records and discusses with the child's current teacher(s) and counselor(s) to determine if the district



had knowledge that the child may be in need of special education services.

If the principal determines that HCPS does not have knowledge that the child has a disability, then the child is subjected to the same disciplinary procedures applied to children who do not have disabilities. The building principal documents the review of records according to HCPS Board Policy.

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

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

If a child is being considered for expulsion and the parent requests an evaluation for a possible disability, the HCPS Representative or designee schedules an ARC meeting to review the referral and discuss an evaluation. The ARC conducts the evaluation in an expedited manner. The child remains in the disciplinary placement during the evaluation unless educational services are required under some other provision of law.

### **REPORTING TO LAW ENFORCEMENT AGENCIES**

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

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

When the principal has a reasonable belief that an act has occurred on school property or at a school-sponsored function involving assault resulting in serious physical injury, a sexual offense, kidnapping, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a controlled substance in violation of the law, or damage to the property, the principal shall immediately report the act to the appropriate local law enforcement agency. For purposes of this section, "school property" means any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

KRS 158.154

A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or Kentucky State Police, by telephone or otherwise, if the person knows or has reasonable cause to believe that conduct has occurred which constitutes a misdemeanor or violation offense under the laws of this Commonwealth and relates to carrying, possession, or use of a deadly weapon; or use, possession, or sale of controlled substances; or any felony offense under the laws of this Commonwealth; and the conduct occurred on the school premises or within one thousand (1,000) feet of school premises, on a school bus, or at a school-sponsored or sanctioned event.

KRS 158.155 (4)

Any person required to report under KRS 158.155 who fails to report promptly or who refuses to make a report is guilty of a Class A misdemeanor.

KRS 158.990

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.

When a HCPS representative learns, or has reason to believe, a crime has been committed by a child with a disability, the representative follows HCPS Board Policy to report the crime to the appropriate authorities.

### Temporary Injunctive Relief for Dangerous Children

If the admissions and release committee determines that an exceptional 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. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be terminated during a period of expulsion and during a suspension after a student is suspended for more than a total of ten (10) days during a school year. A district may seek temporary injunctive relief through the courts if the parent and the other members of the admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.

KRS 158.150 (7) (c)

If the parent and members of the ARC can not agree upon current placement, the Superintendent, or designee, may apply to an appropriate court for injunctive relief.

### Transmission of Records

If an LEA reports a crime committed by a child with a disability, it shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Education Rights and Privacy Act, 20 U.S.C. Section 1232g.

707 KAR 1:340 Section 17 (2)  
34 CFR 300.535 (b) (2)

If HCPS personnel report a crime, the HCPS Representative contacts the parents of the child in accordance with district procedures. The HCPS Representative explains the circumstances of the criminal report, and informs the parent that educational records are released to authorities under the following conditions (see procedures for **Disclosure of Educational Records in Confidentiality**):

1. In compliance with a lawfully issued subpoena. The HCPS representative notifies the parents in writing that the records have been subpoenaed before forwarding them to the requesting party.
2. In emergency situations where the disclosure is necessary to protect the health or safety of the child or others.

In all other situations, signed parent consent for release of educational records is required.

Files created and maintained by a School Resource Officer for law enforcement purposes may not be governed by FERPA.

## **EVALUATION**

### **REFERRAL SYSTEM**

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

707 KAR 1:300 Section 3 (2)  
34 CFR 300.646

HCPS ensures that students are provided with appropriate instruction and interventions prior to referral through the use and implementation of the HCPS System of Interventions (SOI).

#### **Referral Sources**

An LEA shall have a referral system that explains how referrals from district or non-district sources will be accepted and acted upon in a timely manner.

707 KAR 1:300 Section 3 (1)

#### School Personnel as Referral Source

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 is supported in the development of appropriate instructional and/or behavior supports for the child.

#### Parent or other Non-school as Referral Source

If a parent or other person not employed by HCPS seeks assistance for a child whom he or she believes to have a disability, the building principal or designee provides assistance to make sure the written referral:

1. includes the required information, and
2. is submitted to the ARC within 15 school days.

The HCPS follows procedures for confidentiality when receiving information from a non-district source.

When a referral is submitted by any source, the HCPS Representative or designee convenes an ARC within 15 school days to determine if the referral is complete. One component of a complete referral is the documentation of interventions, appropriate instruction, and behavior supports that have been implemented prior to referral to target and address the academic(s) and behavior(s) of concern.

#### **Prior to a Referral for Special Education Assessment**

HCPS utilizes the System of Interventions (SOI) to provide support to meet the diverse learning and behavioral needs of students.

The LEA shall ensure that:

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

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

707 KAR 1:300 Section 3 (3)

707 KAR 1:310 Section 6

34 CFR 300.309 (b)

If the child has not made adequate progress after an appropriate period of time during which the conditions in 707 KAR 1:300 Section 3 (3) and 707 KAR 1:310 Section 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 (4)

707 KAR 1:310 Section 7

34 CFR 300.309 (c) (1)

HCPS ensures that students are provided with appropriate instruction and interventions prior to referral through the use and implementation of the HCPS **System of Interventions (SOI)**. The **System of Interventions (SOI)** provides support to meet the diverse learning and behavioral needs of students (see HCPS policy and procedures for **System of Interventions**).

### Early Intervening Services

An LEA may conduct early intervening services for students from kindergarten through twelfth (12<sup>th</sup>) 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. In order to provide these coordinated early intervening services, an LEA shall not spend more than 15% of the money received under IDEA Part B.

707 KAR 1:300 Section 2

34 CFR 300.226

### **Referral Information**

The written referral and student performance information includes the following:

1. personally identifiable data including name and date of birth of child, social security number if available, parent name, address, and phone number;
2. 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; a summary of achievement data; family and student programs (provided through the school or other agencies) in which the child has received services; and other relevant information;
3. 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 and functional performance or developmental skills; health, hearing, vision and motor abilities; social and emotional interaction; general intelligence; and transition needs for students who are in 8<sup>th</sup> grade or are age 14 and older.
4. for each area of concern, documentation or written summary of the results of

HCPS' **System of Interventions (SOI)** process which includes appropriate instruction, support services, and interventions that have been provided to address the concern and improve the educational achievement and functional performance and/or behavior of the child.

Upon receipt and review of a referral, the HCPS Representative or designee selects and notifies members of the ARC according to procedures for **Notice of ARC Meeting in Procedural Safeguards**.

### **ARC REVIEW OF STUDENT PERFORMANCE INFORMATION**

Prior to meeting to review the referral information, the HCPS Representative or designee selects and notifies ARC members for an ARC Meeting. The HCPS Representative or designee notifies all members to bring data or information about the child to use in reviewing the referral. (See sections on **ARC Membership and Notice Of ARC Meetings In Procedural Safeguards**).

A member of the ARC may be excused from attending the meeting according to procedures for **Excusal from ARC Meetings in Procedural Safeguards**.

The HCPS Representative or designee is responsible for making sure that the ARC decisions are documented on the Conference Summary and IEP, as appropriate.

The HCPS Representative or their designee asks the parent if they have received a copy of the Procedural Safeguards (parent rights), and reviews the rights.

The HCPS Representative or designee describes the decision making process, which may include the following steps:

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

### **ARC Review of Data**

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

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

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

- (a) whether the child has a particular category of disability and the educational needs of the child, or in

the case of a reevaluation of the child, whether the child continues to have a disability, and the educational needs;

(b) the present levels of academic achievement and related developmental needs of the child;

(c) whether the child needs special education and related services, or in the case of a reevaluation, whether the child continues to need specially designed instruction and related services; and

(d) whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum.

707 KAR 1:300 Section 4 (14-15)  
34 CFR 300.305 (a)

Prior to initiating a full and individual evaluation, the ARC makes sure that:

1. results of vision, hearing and other screenings required for all children are available and used in the decision making process;
2. in the event that screening information (e.g., vision, hearing, health, etc.) required by HCPS for all children is not available, such screenings are conducted prior to additional assessments being administered; and
3. issues identified by failed screenings are addressed prior to collection of other evaluation data.

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

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

HCPS uses screening information to determine appropriate instructional interventions, and does not use screening results for eligibility determinations.

Step 1: The ARC reviews the referral and student performance information and any additional information. Additional information may consist of evaluations and information provided by the parents, current informal classroom-based assessments and observations.

Step 2: Using the referral and student performance information, and any additional information, the ARC reviews the student's abilities in each evaluation area and decides if the student's performance significantly differs from peers in any area(s) to the extent that the information supports the presence of a suspected disability.

### Review of Appropriate Interventions

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

(a) a lack of: appropriate instruction in reading including the essential components for reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. Section 6301;

(b) a lack of appropriate instruction in math; or

(c) limited English proficiency and the child does not otherwise meet eligibility criteria.

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

Step 3: The ARC reviews the interventions implemented for the area(s) of concern to verify that appropriate instruction and support have been provided to address

factors possibly contributing to deficits in educational performance. The ARC reviews the data, analyzes the information, and decides if the interventions were:

- a. Designed and implemented for each area of concern.
- b. Implemented by using different methods, strategies, materials, and environmental changes.
- c. Designed to promote the attainment of the desired behavior.
- d. Compatible with the student's instructional level and curriculum.
- e. Implemented consistently over a period of time.

### **Determination of Sufficient Information**

Step 4: The ARC decides if sufficient information is available to determine the need for initiating a full and individual evaluation of the child. If sufficient information is not available, the ARC determines what information needs to be collected, and chooses a date to reconvene the meeting for review of that data.

### **Determination of a Suspected Disability**

The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

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

Step 5: If the referral and student performance information indicates the possibility of a disability, the ARC specifies the suspected disability and the need to initiate a full and individual evaluation. The ARC members eliminate the disability areas where there is no match or alignment with the concerns identified through the referral process. The ARC may consider more than one disability area.

### **Identifying the Areas for Assessment**

The evaluation shall 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)

Step 6: The ARC identifies the general areas needed for assessment of the suspected disability to ensure a comprehensive evaluation is completed. The HCPS Representative or designee documents the suspected disability and the general areas for evaluation on the Consent for Evaluation form and the Evaluation Plan form.

A HCPS administrator/designee assigns qualified evaluators for each area related to the suspected disability conduct a full and complete individual evaluation.

### **Requesting Consent for Evaluation Services**

An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and



before the initial provision of specially designed instruction and related services.

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

Step 7: The HCPS Representative or designee gives the parents a copy of the Conference Summary of the notice of proposed action to evaluate and a copy of the Consent for Evaluation form and/or Evaluation Plan.

The HCPS Representative or designee obtains written parental consent before any individual evaluation procedures or instruments are administered to a child to determine if the child has a disability and needs special education and related services.

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

(a) the child is evaluated, and

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

707 KAR1:320 Section 2 (2)  
34 CFR 300.301 (c) (1) (i)

If the parent does not give written consent, the HCPS Representative or designee and the DoSE follow procedures for **Denial or Revocation of Parental Consent in Procedural Safeguards**.

An LEA shall ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of the services. The results of the evaluation shall be used by the ARC in meeting the requirements on developing an IEP as provided in 707 KAR 1:320.

707 KAR 1:300 Section 4 (1)  
34 CFR 300.301 (a)

The ARC ensures that neither special education nor related services are provided to a child before a full and individual evaluation is completed and eligibility for a disability is determined.

#### Referral and Student Performance Information does not Support a Suspected Disability

If the ARC determines that the referral does not support a suspected disability and decides not to conduct an evaluation, the ARC documents the decision in the Conference Summary. The decision not to conduct the evaluation is based on progress monitoring data and the student's educational performance in the general education curriculum.

The HCPS Representative or designee gives the parent a copy of the Conference Summary informing them of the ARC's refusal to initiate an evaluation of the child.

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

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

707 KAR 1:300 Section 4 (13)



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

- (a) if the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and the parent and the LEA agree to a specific time when the evaluation shall be completed; or
- (b) if the parent repeatedly fails or refuses to produce the child for evaluation.

707 KAR1:320 Section 2 (5)  
34 CFR 300.301 (d) (1) & (e)

Upon receiving the records of a student who is transferring to HCPS during the evaluation process, HCPS staff reviews the record and contacts the previous district to coordinate the completion of the evaluation. HCPS staff reviews the status of the child's evaluation and determines if the sixty (60) school day timeline can be met. If HCPS staff determines that timelines cannot be met, an ARC is convened to discuss with the parent the progress of the child in the evaluation process and work together to agree on the timeline for completion of the evaluation. Decisions are recorded on a conference summary.

HCPS staff follow **Transmittal of Educational Records for Transfer Students** in procedures for **Placement in the Least Restrictive Environment**.

## EVALUATION INSTRUMENTS AND PROCESS

A variety of assessment tools and strategies shall be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum described in the Kentucky Program of Studies, 704 KAR 3:303.

707 KAR 1:300 Section 4 (5)  
34 CFR 300.304 (b) (1)

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

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

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

HCPS evaluation personnel make the appropriate selection of evaluation instruments, strategies, tools, and/or procedures (see **Definitions**) for each area identified by the ARC, which may include:

1. general education interventions or early childhood screenings
2. record review
3. interviews
4. observations
5. tests (standardized, performance based, curriculum based, etc.)
6. information provided by the parent
7. information provided by the teachers and service providers

## Evaluation Criteria and Procedures

Evaluation personnel use the following criteria and procedures in the administration of assessments.

A standardized test given to a child shall:

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

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

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)

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

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

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)

### Observations for Children Suspected of Having a Specific Learning Disability

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

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

Documentation of behavior observation(s) includes a description of the activity and behaviors observed, such as:

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

The child is observed in the environment(s) in which the targeted behavior occurs. When a child is less than school age, or out of school, observation(s) are conducted in age appropriate environments (e.g., preschool programs, vocational programs, day care, community, home).

At least one observation in each area of concern will be completed by an ARC member

other than the child's regular education teacher. The member observes the child's academic performance in the regular classroom setting. Observation(s) are conducted by someone who is specifically trained in observation techniques and methods.

If the child is less than school age or is out of school, the observation takes place in an environment appropriate for the child.

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

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

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

HCPS determines "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 Kentucky state-supported institutions of higher education, no translator or interpreter can be found.

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)

HCPS follows the state guidelines on testing students with limited English proficiency. (Inclusion of Special Populations in the State-Required Assessment and Accountability Programs 703 KAR 5:070.)

### **Responsibilities of Evaluation Personnel**

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

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

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

### **Over-Representation or Under-Representation**

HCPS personnel utilize tests, materials, and processes that are culturally sensitive. If apparently valid and reliable testing and evaluation materials appear to have led to the over-representation or under-representation of children or youth who are members of a particular race, socioeconomic level, national origin or cultural group in any category of children with disabilities, then the HCPS conducts a self-evaluation. The self-evaluation is under the direction of the DoSE and may include:

- a. determining whether additional or substitute materials and procedures which have at least equal predictive validity, but do not have such an effect on

- members of a particular racial, national origin or cultural group, can be identified;
- b. taking any actions to evaluate this effect and to eliminate or overcome racial or cultural insensitivity which results from:
    1. the use of tests with content or language bias;
    2. the use of tests which lack validity for a group of persons with whom they are used;
    3. the use of tests which lack reliability for a group of persons with whom they are used;
    4. the administration of evaluation procedures by evaluators not trained and experienced in evaluating children and youth of a particular culture and linguistic background;
    5. child unfamiliarity with test behaviors and assumptions;
    6. child discomfort with the test administrator or testing environment; or
    7. the failure to integrate evaluation information from multiple sources or to reconcile inconsistent or conflicting evaluation results.

HCPS evaluation personnel select and administer current editions of assessment instruments and follow the "Standard Industry Practice" for using newly revised assessment instruments. The Standard Industry Practice is two years after the release of the new assessment instrument, the old assessment is considered out of date.

The DoSE makes sure that each person administering and interpreting evaluation procedures and instruments meets the training specifications stated in the test administration manual. HCPS evaluation personnel are trained in:

1. specific areas of evaluation of children and youth with disabilities;
2. the specific evaluation procedures used with children and youth with disabilities;
3. use of the procedures for the purpose intended by the developer and with individuals for whom their reliability and validity are empirically supported; and
4. 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.

HCPS evaluation personnel make sure that:

1. evaluation procedures appropriate for the age and ability level of the child are used; and
2. procedures selected are normed on a population which includes children and youth the same age.

Each evaluator:

1. selects tests and other procedures they have been trained to administer;
2. 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;
3. makes sure that tests are not administered to children or youth whose age, disability, linguistic or cultural background is outside the range of his or her training or experience; and
4. describes any modification of standard test administration procedures or scoring with cautions regarding the possible effects of such modifications on validity.

## Contractual Arrangements with Evaluators

When cognitive or intellectual evaluation is obtained by a contract with an outside provider, the DoSE makes sure 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 are obtained and maintained by the DoSE prior to the initiation of the contract.

## **Written Evaluation Report**

Upon analysis of intervention and assessment data, the ARC shall 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. An LEA shall 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)

The evaluation data obtained, interpreted and used by the ARC to determine eligibility and plan an appropriate program is documented in the form of a written report.

The report summarizes the results of each procedure and instrument used in the individual assessment. The ARC uses the results summarized in the report to:

1. validate the specific disability;
2. determine the need for special education and related services; and
3. plan instruction.

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

1. child identification information (i.e., name, parents, phone, date of birth, grade, school);
2. a comparison and interpretation of the performance of the child to similar age peers in areas;
3. the full name of all 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;
4. data and sources from standardized, norm-referenced measures which:
  - a. include standard scores and not solely percentiles, grade, or age equivalents;
  - b. are reported with confidence intervals; and
  - c. are in a form that allows for inter-test comparisons (e.g., converted to age-based scores);
5. data from all informal measures, including:
  - a. results of interventions tried before referral;
  - b. a summary of behaviors noted during the observation(s) of the child;
6. a discussion of any discrepancies among evaluation results, e.g., between formal test results and the customary behaviors and daily activities of the child;
7. statements about the unique or individual differences of the child related to the education environment and success in general education curriculum;
8. statements about specific classroom tasks or contexts which are unique to the

- child (e.g., error pattern analysis, learning style or learning preferences, incentive or motivational style, communication and interpersonal skills);
- 9. statements about other factors that impact the educational performance of the child (e.g., medical, environmental, cultural, or linguistic factors);
- 10. descriptions of the types of activities which might effectively meet the unique educational needs of the child (e.g., instructional techniques, modifications or adaptations, behavior management strategies, lighting, study carrels); and
- 11. a list of the names and professional roles of all evaluators.

When computer-assisted reports are used, the program:

- 1. allows for input of individually relevant data beyond demographic data;
- 2. responds to the specific concerns of the ARC;
- 3. analyzes the data including the provision of recommendations that relate to individualized instructional planning specific to the individual child; and
- 4. allows for the application of Kentucky-specific eligibility criteria (i.e., Kentucky developed guidelines).

The evaluator gives a copy of the written report to the HCPS Representative or designee. The HCPS Representative or designee schedules an ARC meeting for the purpose of reviewing the evaluation results and making a determination of eligibility.

## REEVALUATION

An LEA shall ensure a reevaluation, unless the parent and LEA agree that a reevaluation is unnecessary. A reevaluation may consist of the review described in 707 KAR 1:300 Section 4 (14) and is conducted at least every three (3) years to determine:

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

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

The ARC conducts a reevaluation by the third anniversary of the date of the meeting when the ARC last determined that the child was eligible for special education and related services for children who:

- 1. have a current IEP; or
- 2. have a current Service Plan; and
- 3. are eligible for special education and related services, attend private schools, but are not currently receiving services (see **Child Find System** in procedures for **Child Find**).

The ARC meets to review existing data to determine if further assessment is needed for a reevaluation. Based on the review, the ARC makes the following determinations:

- 1. the present levels of performance and educational needs of the child;
- 2. whether the child continues to meet eligibility for a disability;
- 3. whether the child continues to need specially designed instruction and related services; and
- 4. whether any additions or modifications to the special education and related services are needed for the child to meet the goals in the IEP and participate in the general curriculum.



The ARC conducts a reevaluation according to **ARC Review of Student Performance Information** in procedures for **Evaluation** prior to:

1. continuing eligibility for special education and related services;
2. releasing a student from special education and related services; and
3. exiting a student with a certificate of completion/attainment (not a regular high school diploma) prior to reaching his/her twenty-first (21<sup>st</sup>) birthday.

The ARC is not required, but may consider conducting a reevaluation when a student:

1. graduates with a regular high school diploma; and
2. turns twenty-one before completing a program (aging out of school).

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

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

Prior to releasing the student, the HCPS Representative or designee assigns a HCPS staff person to prepare a summary, in consultation with the student, of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the postsecondary goals. HCPS staff provides the student with a copy of the summary before graduation according to procedures for **Graduation with a Diploma, Completion of a Certificate/Attainment Program, and Exceeding the Age Eligibility for FAPE in Placement in the Least Restrictive Environment**.

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

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

HCPS does not conduct reevaluations more than once per year unless HCPS and the parents agree to conduct further evaluation.

### **Prior to the ARC Meeting to Discuss the Need for a Reevaluation**

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

- (a) teaching methodology;
- (b) lesson plans;
- (c) coordination of service provision; or

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

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

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.



## ARC MEETING TO DISCUSS THE NEED FOR A REEVALUATION

Prior to meeting to discuss the need for a reevaluation, the HCPS Representative or designee selects and notifies ARC members for an ARC Meeting (according to **ARC Membership** in procedures for **Procedural Safeguards**). The HCPS Representative or designee notifies all members (according to **Notice of ARC Meetings** in procedures for **Procedural Safeguards**) to bring data or information about the child to use in reviewing the need for a reevaluation.

A member of the ARC may be excused from attending the meeting according to procedures for **Excusal from Arc Meetings** in **Procedural Safeguards**.

The HCPS Representative or designee is responsible for making sure that the ARC decisions are documented on the Conference Summary and IEP, as appropriate.

### ARC Review of Data

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

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

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

To determine the needs for reevaluation, the ARC reviews the educational record, information provided by the parents, current classroom based assessments and observations, teacher and related service provider observations, progress data, work samples, standardized assessment, state and district assessment, diagnostic tests, and discipline referrals.

### ARC Determines Existing Data is Sufficient

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

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

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

If, after the review of existing data, the ARC determines there is sufficient data to make decisions for continued eligibility and IEP planning, the ARC summarizes the data review and completes the Reevaluation Report. The completed Reevaluation Report (Review of Existing Data Form) becomes the Written Evaluation Report. The ARC completes the Eligibility Report for the reevaluation process.

The LEA shall administer tests and other evaluation materials as needed to produce the data identified by the ARC. If, for purposes of a reevaluation, the ARC determines that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the LEA shall notify the child's parents:

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

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

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

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

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

(a) after review of the existing data, the ARC determines:

(1) a reevaluation is not necessary to determine whether the child continues to be eligible for services; and

(2) a reevaluation is not warranted to determine the education or related services needs, including improved academic achievement and functional performance; and

(b) the parents or teacher do not request a reevaluation.

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

The appropriate HCPS Representative obtains written parental consent before conducting any reevaluation even if a parent requested the reevaluation.

HCPS does not conduct reevaluations if, after a review of the existing data, the information shows:

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
3. the parents or teacher do not request a reevaluation.

### **ARC Determines Some Existing Data is Sufficient**

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. If, after the review of existing data, the ARC determines there is sufficient data to make decisions in some areas, the ARC members:

1. summarize the data review;
2. identify any areas needing further assessment;
3. complete the Reevaluation Report; and
4. request consent for evaluation in the areas determined insufficient.

Upon completion of the requested reevaluation information, the ARC meets to review

the evaluation information according to **ARC Review of Student Performance Information** in procedures for **Evaluation**. The Reevaluation Report becomes an addendum to the Written Evaluation Report and Eligibility Report.

### Parent Request for Reevaluation

HCPS is not required to conduct a full battery assessment of a child to determine if the child continues to be a child with a disability unless requested to do so by the parent. If the parent requests an assessment of their child, HCPS may refuse to conduct the assessment, but provides the parent with a copy of the Conference Summary stating the refusal to conduct the assessment and the reasons for the refusal. The parent may request mediation or due process if they want the assessment conducted.

### **ARC Determines Existing Data is Insufficient (Full and Individual Assessment)**

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 follows **ARC Review of Student Performance Information** in procedures for **Evaluation**.

### Re-administration of Cognitive Assessments

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

1. the child has a minimum of two consistent IQ scores with one being at or above age 9; and
2. the child's IQ scores have a confidence interval of no less than 90%.

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)

All evaluations are conducted according to **Evaluation Instruments and Process** in procedures for **Evaluation**.

### **Consent for Reevaluation**

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

707 KAR 1:340 Section 5 (6)

34 CFR 300.300 (c) (1)

Parental consent for reevaluation shall not be required if the LEA can demonstrate that:

- (a) it made reasonable efforts to obtain such consent, and followed the procedures in 707 KAR 1:340 Section 5 (4) to show those efforts; and
- (b) the parent failed to respond.

707 KAR 1:340 Section 5 (7)

34 CFR 300.300 (c) (2)