

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.

## INDEPENDENT EDUCATIONAL EVALUATION

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

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

If a parent requests for an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the LEA, the LEA shall, without unnecessary delay:

- (a) initiate a due process hearing to show that its evaluation is appropriate; or
- (b) ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria.

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

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

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

If a parent requests an independent educational evaluation, the HCPS Representative or designee documents the request, notifies the DoSE, and schedules an ARC meeting to review the request. The HCPS Representative or designee notifies the committee members according to **Notice of ARC Meetings** in procedures for **Procedural Safeguards**.

The LEA may ask for the parent's reasons why he objects to the LEA's evaluation; however, the parent shall not be required to respond and the LEA shall not delay its action under 707 KAR 1:340 Section 2 while waiting for a response from a parent; and

707 KAR 1:340 Section 2 (4)  
34 CFR 300.502 (b) (4)

At the ARC meeting to discuss the request for an independent educational evaluation, the DoSE (or psychologist) reviews the last evaluation conducted by the district.

The DoSE may ask the parent why they disagree with the district's evaluation. The parent does not have to give their areas of disagreement or reasons for requesting an independent educational evaluation.

The DoSE may attempt to negotiate areas of evaluation for HCPS to conduct with the child to try to resolve the issue(s).

If the date of the disputed evaluation is close to the date of the child's next reevaluation, the DoSE may recommend that another full and complete evaluation be conducted by the district.

## Review of an IEE

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

707 KAR 1:340 Section 2 (8)  
34 CFR 300.502 (c) (1)

HCPS reviews and considers the results of any independent educational evaluation, whether obtained by the parent or the HCPS. HCPS follows **ARC Review of Student Performance Information** in procedures for **Evaluation**.

## Criteria for IEE

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

707 KAR 1:340 Section 2 (5)  
34 CFR 300.502 (e) (1-2)

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

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

The DoSE gives the parent a list of independent evaluators who meet the minimum qualifications, and the criteria used by HCPS for evaluations.

## Cost of IEE

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

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

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

707 KAR 1:340 Section 2 (7)  
34 CFR 300.502 (b) (3)

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

707 KAR 1:340 Section 2 (9)  
34 CFR 300.502 (d)

## ELIGIBILITY DETERMINATION

### Organizing The Meeting To Review The Evaluation And Determine Eligibility

Upon completion of the full and individual evaluation, the HCPS Representative or designee schedules an ARC Meeting for the purpose of reviewing the evaluation.

Prior to the ARC meeting for the review of evaluation information, 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 evaluation information.

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.

At the ARC meeting to discuss eligibility, the HCPS Representative or designee asks the parent if they have questions or want to review parent rights (according to procedures for **Procedural Safeguards**, Notice of Procedural Safeguards).

### **ARC Review of Evaluation Information**

In making eligibility determinations, an LEA shall draw upon information from a variety of sources, which may include:

- (a) response to scientific, research-based interventions;
- (b) vision, hearing, and communication screenings;
- (c) parental input;
- (d) aptitude and achievement tests;
- (e) teacher recommendations;
- (f) physical condition;
- (g) social or cultural background;
- (h) adaptive behavior; or
- (i) behavioral observation.

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

A LEA shall ensure that information obtained from all of these sources, as appropriate for each student, is documented and carefully considered.

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

Assessment tools and strategies shall be used that provide relevant information that directly assist and are used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, 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 300.304 (b) (1)

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

Step 1: The ARC reviews the written report, evaluations, student performance information, and additional information. Additional information may consist of evaluations and information provided by the parents, current classroom-based, local or state assessments and classroom-based observations, and

observations provided by teachers and related service providers.

### **Determining Eligibility for a Disability**

Step 2: The ARC compares and analyzes the evaluation, student performance information, and any additional information to determine if the child has a disability that meets the criteria as defined in a disability definition.

### **Determination of Sufficient Information**

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

707 KAR 1:300 Section 4 (11)

34 CFR 300.304 (c) (6)

Step 3: The ARC decides if sufficient information is available to determine if a disability exists. 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 the information.

Evaluation information is determined sufficient if:

1. Multiple non-discriminatory methods or measures were used to evaluate the areas of concern previously specified by the ARC;
2. Data on family, environmental, and cultural factors is available for analysis to assist in the determination of the impact on educational performance;
3. Referral data and additional information document the present levels of academic achievement and related developmental needs of the child, including how the disability affects the child's involvement and progress in the general curriculum;
4. Information given provides objective and reliable indicators of the child's performance;
5. The documentation of the evaluation information is complete and reflects the information collected by the multidisciplinary team in all areas related to the suspected disability.

### **Determinant (Exclusionary) Factors**

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 4: The ARC considers determinant factors for each suspected disability area. For a child to be eligible for a disability, the ARC must conclude that the influence of the determinant factor(s), if present, is minimal, and that the child meets eligibility requirements when all other criteria are applied.

The ARC reviews the evaluation data and determines exclusionary factors do **not** exist in reaching a conclusion for the suspected disability area(s) if:

1. The child's lack of progress in the general curriculum is **not** caused or explained by the child's lack of appropriate instruction in reading, including the essential

components (i.e., phonemic awareness, phonics, fluency, comprehension, and vocabulary) for reading instruction as established in the Elementary and Secondary Education Act (ESEA), 20 U.S.C. 6301.

2. The child's lack of progress in the general curriculum is **not** caused or explained by the child's lack of appropriate instruction in math.
3. The child's lack of progress in the general curriculum is **not** caused or explained by the student's limited English proficiency.
4. The child does not otherwise meet eligibility criteria for a disability.

If evaluation data collected supports the presence of one or more determinant factors, the summary recorder includes the ARC discussion of the factor(s) in the Conference Summary and the ARC checks the determinant factor and documents the child does **not** have a disability according to the criteria on the Eligibility Report.

### **Adverse Affect**

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

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

Step 5: If the evaluation information meets the eligibility requirements for a disability, the ARC determines there is an adverse affect if:

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

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) (1-2)

If evaluation data collected supports eligibility for a disability, the summary recorder includes the ARC discussions on the Conference Summary, and the ARC documents the decisions on the Eligibility Report.

If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child.

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

The ARC may develop the IEP at this meeting, according to procedures for IEP.

### Evaluation does not Support Eligibility Requirements for a Disability

If the ARC determines the child does not meet eligibility requirements for a disability, the

ARC documents the decisions and gives the parent copies of the Conference Summary and Eligibility Report stating the ARC decision(s).

The HCPS Representative or designee files copies of the Conference Summary and notices of the refused action in the educational record of the child or youth.

### Children not Eligible for Preschool Services

In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive.

34 CFR 303.148 (b) (2) (ii)

If the ARC determines a child does not meet eligibility requirements for special education and related services. HCPS staff will discuss appropriate services the child may receive. Copies of the Conference Summary and any notices are filed in the education record of the child.

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

### **Autism**

**"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.

707 KAR 1:280 Section 1 (5)

KRS 157.200 (1) (m)

34 CFR 300.8 (c) (1)

The ARC compares and analyzes evaluation data and documents the following interpretation:

- The student has a developmental disability, generally evident before age 3, significantly effecting verbal, nonverbal and pragmatic communication. (e.g., eye-to-eye gaze, facial expression, body postures, stereo-typed and repetitive use of language, idiosyncratic language); AND
- The student has a developmental disability effecting social interaction. Deficits in social interaction (participation) can include:
  - social cues
  - emotional expression
  - personal relationships
  - reciprocal (contributing) interaction (e.g., lack of showing/bringing or pointing out objects of interest, lack of varied spontaneous make-believe play, social imitative play at the developmental level)
  - repetitive ritualistic behavioral patterns including insistence on following routines and a persistent pre-occupation and/or attachment to objects (could include stereo-typed and repetitive motor mannerisms)
  - abnormal responses to environmental stimuli
- Deficits are not primarily the result of an emotional-behavior disability.

- Deficits have an adverse effect on educational performance.
- Lack of instruction in reading and/or math was not a determinant factor in the eligibility decision
- Limited English proficiency was not a determinant factor in the eligibility decision.
- The child is eligible for specially designed instruction and related services.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Deaf-Blindness

**“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.

707 KAR 1:280 Section 1 (21)  
KRS 157.200 (1) (i)  
34 CFR 300.8 (c) (2)

The ARC compares and analyzes evaluation data and documents the following interpretation:

- A hearing loss as follows:
  1. an average pure-tone hearing loss in the speech range (500 Hz, 1000 Hz, and 2000 Hz) of at least 25dB in the better ear; or
  2. an average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or
  3. an average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear; and
  4. Deficits exist in processing linguistic information through hearing, with or without amplification.
  5. The hearing impairment adversely affects the educational performance of the child.
- A visual impairment as follows:
  1. The visual acuity with prescribed lenses is 20/70 or worse in the better eye; or:
  2. The visual acuity is better than 20/70, and the child has one (1) of the following conditions:
    - a. a medically diagnosed progressive loss of vision;
    - b. a visual field of 20 degrees or worse;
    - c. a medically diagnosed condition of cortical blindness; or
    - d. a functional vision loss.
  3. The child requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration.
- The combination of the two impairments causes such severe communication, developmental, and learning needs that the child cannot benefit from programs designed solely for children with visual impairments

- or hearing impairments.
- The deaf-blind impairment adversely affects the educational performance of the child.
- The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
- The child is eligible for specially designed instruction and related services.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Developmental Delay

**“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:

(a) 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; or

(b) 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

(c) the professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

707 KAR 1:280 Section 1 (22)

KRS 157.200 (1) (k)

34 CFR 300.8 (b)

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. The child is three (3) through eight (8) years of age;
2. The child has not acquired skills or achieved commensurate with recognized performance expectations for his or her age in one or more of the following developmental areas:
  - a. Cognition;
  - b. Communication;
  - c. Motor development;
  - d. Social-emotional development; or
  - e. Self-help or adaptive behavior.
3. The child demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and the current level of performance. This discrepancy is documented by:
  - a. Scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures; or
  - b. Scores of one and one-half standard deviations below the mean in two (2) or more of the five developmental areas listed using norm-referenced instruments and procedures; or



- c. The professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment is used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.
4. The developmental delay adversely affects the educational performance of the child.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### **Emotional-Behavioral Disability**

**“Emotional-behavioral disability (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.

(b) 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.

707 KAR 1:280 Section 1 (24)

KRS 157.200 (1) (g)

34 CFR 300.8 (c) (4)

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. When compared to child’s peers/cultural reference groups, the child continues to exhibit severe deficits in social competence or academic performance:
  - a. across settings;
  - b. over a long period of time;
  - c. to a marked degree; and
  - d. after appropriate academic and behavioral interventions have proven ineffective.
2. If any deficit in social competence is identified, then the deficit is to the extent that it impairs personal relationships with peers or adults and it is clearly indicated that the behavior deviates from the standards for the appropriate peer and cultural reference groups.
3. Severe deficits in academic performance not commensurate with the student’s ability level and not solely a result of intellectual, sensory, or other health factors but are related to the child’s social-emotional problem.
4. A general pervasive mood of unhappiness or depression.
5. A tendency to develop physical symptoms or fears associated with personal or school problems.
6. This severe deficit in social competence, appropriate behavior, and academic performance is not the result of isolated (not necessarily one) inappropriate behaviors that are the result of willful, intentional, or wanton actions.

7. The emotional-behavioral disability adversely affects the educational performance of the child.
8. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Hearing Impairment

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

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

1. an average pure-tone hearing loss in the speech range (500 Hz, 1000 Hz, and 2000 Hz) of at least 25dB in the better ear;
2. an average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or
3. an average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear;

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

(c) has an adverse affect on the child’s educational performance.

707 KAR 1:280 Section 1 (29)  
KRS 157.200 (1) (d)  
34 CFR 300.8 (c) (5)

The ARC may request a comprehensive evaluation of hearing loss; other data may include aptitude and achievement measures and classroom observations.

The ARC compares and analyzes the evaluation data and documents the following interpretation:

- (a) may be mild to profound, unilateral or bilateral, permanent or fluctuating, and is determined by):
  - (1) an average pure-tone hearing loss in the speech range (500 Hz, 1000 Hz, and 2000 Hz) of at least 25dB in the better ear; or
  - (2) an average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or
  - (3) an average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear; and
- (b) Deficits exist in processing linguistic information through hearing, with or without amplification.
- (c) The hearing impairment adversely affects the educational performance of the child.

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

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

## Mental Disability

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

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

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

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

1. cognitive functioning is at least three (3) standard deviations below the mean;
2. adaptive behavior deficit is at least three (3) standard deviations below the mean;
3. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
4. is typically manifested during the developmental period.

707 KAR 1:280 Section 1 (37)

KRS 157.200 (1) (e)

34 CFR 300.8 (c) (6)

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)

Documentation of the initial evaluation information must verify adaptive behavior deficit is at least two (for MMD) or three (for FMD) standard deviations below the mean. Upon reevaluation, it is not necessary to continue to meet the standard deviation deficit in adaptive behavior. The ARC decides (1) if the disability still exists and (2) what amount or level of specially designed instruction the student needs.

Special Education Monitoring Manual, July 1998

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean.
2. Adaptive behavior deficit is at least two (2) standard deviations below the mean.
3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.
4. Is typically manifested during the developmental period.
5. The mild mental disability adversely affects the educational performance of the child.
6. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean.
2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean.

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.
4. Is typically manifested during the developmental period.
5. The functional mental disability adversely affects the educational performance of the child.
6. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
7. The child is eligible for specially designed instruction and related services.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Multiple Disabilities

**“Multiple disabilities (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 (1) of the impairments. Multiple disabilities does not mean deaf-blindness nor does it mean a speech or language impairment in combination with another category of disability.

707 KAR 1:280 Section 1 (39)  
34 CFR 300.8 (c) (7)

"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)

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. The student has a combination of two (2) or more of the following disabilities according to the criteria in these procedures:
  - a. Autism
  - b. Emotional-behavioral disability
  - c. Hearing impairment
  - d. Mental disability
  - e. Other health impaired
  - f. Physical or orthopedic disability
  - g. Specific learning disability
  - h. Traumatic brain injury
  - i. Visual impairment
2. The disability is not a combination of deafness and blindness, or speech and language disorder and another disability.
3. The multiple disabilities adversely affect the educational performance of the child to the extent that educational needs cannot be accommodated through special education programs solely for one impairment.
4. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
5. The child is eligible for specially designed instruction and related services.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Orthopedic Impairment

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

707 KAR 1:280 Section 1 (41)  
34 CFR 300.8 (c) (8)

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)

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. The existence of one or more of the following:
  - a. a severe orthopedic or physical impairment of bone or muscle caused by congenital anomaly (i.e., clubfoot, absence of members);, disease, injury, or accident;
  - b. an impairment caused by disease (i.e., polio, bone tuberculosis);
  - c. an impairment from other causes such as cerebral palsy, amputations, fractures, burns that cause contractures .
2. The orthopedic impairment adversely affects the educational performance of the child.
3. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

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

1. The existence of a severe orthopedic or physical impairment caused by congenital anomaly, disease, injury, or accident;
2. The diagnosis and nature of the impairment; and
3. Any limitations resulting from the impairment.

The child is eligible for specially designed instruction and related services.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Other Health Impairment

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

educational environment, that:

(a) is due to a chronic or acute health problem e.g., 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

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

707 KAR 1:280 Section 1 (42)

KRS 157.200 (1) (b)

34 CFR 300.8 (c) (9)

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. The existence of a severe health impairment caused by chronic or acute health problems as diagnosed by a licensed physician or qualified mental health professional.
2. The diagnosis and nature of the health impairment. (e.g., acquired immune deficiency syndrome, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette Syndrome, or tuberculosis).
3. The affect of the impairment resulting in:
  - a. Limited **strength** (maintenance and endurance of fine and gross motor skills/activities); **OR**
  - b. Limited **vitality** (endurance in an activity e.g., duration, intensity, and frequency over time); **OR**
  - c. Limited **alertness** (attentional, maintenance of focus on tasks e.g., short attention span; highly distractible).
4. The other health impairment adversely affects the educational performance of the child.
5. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
6. The child is eligible for specially designed instruction and related services.

For initial eligibility, the ARC requires an educationally relevant medical evaluation. The educationally relevant medical evaluation is completed by a licensed physician or a qualified mental health professional and verifies:

- a. the existence of a severe health impairment caused by chronic or acute health problems;
- b. the diagnosis and nature of the health impairment; and
- c. the affect of the impairment on the vitality, strength, or alertness, including a heightened alertness to environmental stimuli, of the child.

For reevaluation, the ARC may determine if the medical statement is required.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Speech or Language Impairment

**"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.

707 KAR 1:280 Section 1 (60)  
KRS 157.200 (1) (c)  
34 CFR 300.7 (c) (11)

The ARC uses the "Kentucky Eligibility Guidelines for Students with Speech-Language Impairment - Revised" to guide the eligibility decision.

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. The student has a disorder in one or more of the following:
  - a. Fluency/stuttering
  - b. Speech Sound Production/articulation
  - c. Language
  - d. Voice
  - e. Delayed acquisition of language
  - f. An absence of language
2. The speech/language disability has an adverse affect on educational performance.
3. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
4. The child is eligible for specially designed instruction and related services.

### Speech as a Related Service

Speech and language services may be provided as a related service, required for the implementation of the IEP. If speech is a related service, the ARC completes a determination of eligibility for speech or language impairment. The ARC makes the determination that the speech or language as a related service is required to assist the child to benefit from special education.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### **Traumatic Brain Injury**

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

- (a) cognition;
- (b) language;
- (c) memory;
- (d) attention;
- (e) reasoning;
- (f) abstract thinking;
- (g) judgment;
- (h) problem-solving;
- (i) sensory, perceptual, and motor abilities;
- (j) psychosocial behavior;
- (k) physical functions;

(l) information processing; and  
m) speech.

707 KAR 1:280 Section 1 (63)  
KRS 157.200 (1) (l)  
34 CFR 300.8 (c) (12)

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. The existence of a traumatic brain injury and the diagnosis and extent of injury, including the possible affect on educational performance.
2. Educationally relevant evaluation data verifies impairment in at least one or more of the identified areas:
  - a. cognition;
  - b. language;
  - c. memory;
  - d. attention;
  - e. reasoning;
  - f. abstract thinking;
  - g. judgment;
  - h. problem-solving;
  - i. sensory, perceptual, and motor abilities;
  - j. psychosocial behavior;
  - k. physical functions;
  - l. information processing; and
  - m. speech.
3. Brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not considered a traumatic brain injury in accordance with this definition.
4. The brain injury has an adverse affect on educational performance.
5. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
6. The child is eligible for specially designed instruction and related services.

For initial eligibility, the ARC requires an educationally relevant medical evaluation. The educationally relevant medical evaluation is completed by a licensed physician and verifies:

1. the existence of a traumatic brain injury caused by an external physical force;
2. the diagnosis and extent of the brain injury; and
3. the possible affect of the impairment on educational performance.

For reevaluation, the ARC may determine if the medical statement is required. A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Visual Impairment

**“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:
  - a. a medically diagnosed progressive loss of vision;
  - b. a visual field of 20 degrees or worse;
  - c. a medically diagnosed condition of cortical blindness; or
  - d. a functional vision loss.

707 KAR 1:280 Section 1 (65)  
34 CFR 300.8 (c) (13)

Visually disabled means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils.

KRS 157.200 (1) (j)

The ARC compares and analyzes evaluation data and documents the following interpretation:

1. The visual acuity with prescribed lenses is 20/70 or worse in the better eye; or
2. The visual acuity is better than 20/70, and the child has one (1) of the following conditions:
  - a. a medically diagnosed progressive loss of vision;
  - b. a visual field of 20 degrees or worse;
  - c. a medically diagnosed condition of cortical blindness; or
  - d. a functional vision loss.
3. The child requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration.
4. The visual impairment has an adverse affect on the child's educational performance.
5. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.
6. The child is eligible for specially designed instruction and related services.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

### Evaluation Procedures for Children with Specific Learning Disabilities

**“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 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.

707 KAR 1:280 Section 1 (59)  
34 CFR 300.8 (c) (10)

Specific means a disorder in one or more of the psychological processes primarily involved in understanding or using spoken or written language which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical

abilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. The term does not include a learning problem 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)

### ARC Membership for Determining a Specific Learning Disability

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

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

707 KAR 1:310 Section 2 (2)

Prior to the ARC meeting, the HCPS Representative or designee selects the appropriate members to invite 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 can not 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.

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)

34 CFR 300.308 (b)

The ARC includes as a member, at least one person qualified to conduct individual diagnostic examinations of children. The qualified individual may be a school psychologist, speech-language pathologist, or educational specialist.

### Eligibility Determination

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

- (a) prior to, or as a part of the referral process, the child was provided appropriate instruction in regular

education settings, including that the instruction was delivered by qualified personnel; and  
(b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parent.

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

The ARC utilizes the System of Interventions (SOI) to provide support to meet the diverse learning and behavioral needs of students. See **Prior to a Referral for Special Education Assessment in Evaluation Procedures**. The ARC considers all evaluation data including the data collected through the SOI to determine if a student may have a Specific Learning Disability.

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

(a) 1. The child is provided with learning experiences and instruction appropriate for the child's age or state-approved grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303; and  
2. The child does not achieve adequately for the child's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:

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

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

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

707 KAR 1:310 Section 2 (3)  
34 CFR 300.309 (a) (1)

The ARC applies the eligibility criteria and follows the steps for **ARC Review of Student Performance Information** in procedures for **Evaluation** to determine if a student meets eligibility for a specific learning disability. A student has a "specific learning disability" if evaluation information verifies each of the following:

1. The student is provided with learning experiences and instruction appropriate for the student's age or state-approved grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303; and
2. The child does not achieve adequately for the student's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:
  - a. Oral expression;
  - b. Listening comprehension;
  - c. Written expression;
  - d. Basic reading skills;
  - e. Reading fluency skills;
  - f. Reading comprehension;

- g. Mathematics calculation; or
  - h. Mathematics reasoning.
3. The student fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies in one or more of the areas (identified above) when assessed based on the student's response to scientific, research-based intervention; **OR** the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development determined by the ARC to be relevant to the identification of a specific learning disability, using appropriate assessments.

The child is eligible for specially designed instruction and related services.

A copy of the evaluation report and the documentation of determination of eligibility are given to the parent.

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

- (a) a visual, hearing, or motor impairment;
- (b) a mental disability as defined in 707 KAR 1:280 (37);
- (c) emotional-behavioral disability;
- (d) cultural factors;
- (e) environmental or economic disadvantage; or
- (f) limited English proficiency.

707 KAR 1:310 Section 2 (4)  
34 CFR 300.309 (a) (3)

The ARC does not identify a student as having a specific learning disability if the deficits in achievement are primarily the result of:

- 1. a lack of instruction in reading or math,
- 2. a visual, hearing, or motor impairment;
- 3. mental disability;
- 4. emotional-behavioral disability;
- 5. environmental, cultural, or economic disadvantage, or
- 6. limited English proficiency.

#### Aptitude/Achievement Discrepancy

When choosing this method, HCPS uses the aptitude/achievement discrepancy tables (current LD tables) to determine initial eligibility for a specific learning disability. For reevaluation purposes, the ARC may use the aptitude/achievement discrepancy tables, although it is not required for continuing eligibility for a specific learning disability. When standardized normative measures of ability and achievement appropriate to a validated regression method are invalid or not available, the psychologist/evaluator provides a written rationale and summary of the procedures used.

#### Written Documentation of a Specific Learning Disability (LD Eligibility Form/Written Report)

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

- (a) whether the child has a specific learning disability;

- (b) the basis for making that determination;
- (c) the relevant behavior noted during the observation;
- (d) the relationship of that behavior to the child's academic functioning;
- (e) the educationally relevant medical findings, if any;
- (f) whether the child does not achieve commensurate with the child's age and ability;
- (g) whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas described in 707 KAR 1:310 Section 2 (3), that require special education and related services; and
- (h) the determination of the ARC concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; environmental, cultural factors; economic disadvantage; or limited English proficiency on the child's achievement level; and
- (i) the instructional strategies used and the student-centered data collected based on the child's response to scientific, research-based intervention.

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

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

- (a) the amount and nature of student performance data that is collected and the general education services that are provided;
- (b) strategies for increasing the child's rate of learning; and
- (c) the parents' right to request an evaluation.

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

The ARC develops Written Documentation of a Specific Learning Disability (LD Eligibility Form/Written Report) that contains statements verifying:

1. whether the child has a specific learning disability;
2. the basis for making the determination;
3. the relevant behavior noted during the observation;
4. the relationship of that behavior to the child's academic functioning;
5. the educationally relevant medical findings, if any;
6. whether the student does not achieve commensurate with the student's age and ability;
7. whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas that require special education and related services; and
8. the determination of the ARC concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; environmental, cultural factors; economic disadvantage; or limited English proficiency on the student's achievement level; and
9. the instructional strategies used and the student-centered data collected based on the student's response to scientific, research-based intervention.

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

1. the amount and nature of student performance data that is collected and the general education services that are provided;
2. strategies for increasing the student's rate of learning; and
3. the parents' right to request an evaluation.

Each ARC member shall certify in writing whether the report reflects the member's conclusions. If it does

not reflect the member's conclusions, the team member shall submit a separate statement presenting the member's conclusions.

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

Each ARC member certifies in writing whether the report reflects his/her conclusion. If it does not reflect his/her conclusion, the team member submits a separate statement presenting his/her conclusions.

## INDIVIDUAL EDUCATION PROGRAM

### RESPONSIBILITY FOR SERVICES

An LEA shall ensure that an IEP is developed and implemented for each child with a disability served by that LEA, and for each child with a disability placed in or referred to a private school or facility by the LEA.

707 KAR 1:320 Section 1 (1)  
34 CFR 300.323 (a)  
34 CFR 300.325 (a)

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

707 KAR 1:320 Section 1 (7)  
34 CFR 300.323 (b)

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

707 KAR 1:320 Section 1 (3)  
34 CFR 300.323 (a)

An LEA shall ensure the IEP:

- (a) is in effect before specially designed instruction and related services are provided to a child with a disability; and
- (b) is implemented as soon as possible following an ARC meeting.

707 KAR 1:320 Section 1 (4)  
34 CFR 300.323 (c)

HCPS makes sure that an IEP is in place at the beginning of each school year for every student with a disability who is aged three (3) to twenty-one (21) years old and is eligible for special education and related services. This includes students who reside within the boundaries of HCPS, and students who are placed by HCPS in a private school.

The ARC members do **not** develop an IEP when a child:

1. has been evaluated and the ARC members have determined that the child does not have a disability under IDEA;
2. has a disability, but that disability does not adversely affect the educational performance of the child; or
3. has an IEP, developed within the last 12 months, that meets the needs of the child.

A LEA (or state agency responsible for developing the child's IEP) shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

707 KAR 1:320 Section 1 (5)

The IEP is implemented as soon as possible following an ARC meeting. Delays in implementation of the IEP may include:

1. meetings held during summer break;
2. developing an IEP for a child who is not yet three (3) years of age;
3. circumstances that require a short delay (e.g., working out transportation arrangements);
4. decisions by the ARC to begin implementation with the next grading period, or other natural break in school instruction; or
5. awaiting parent consent for the initial provision of services.

HCPS provides services directly through staff assignment or creation of resources, or indirectly by contracting with another public or private agency, or through other arrangements.

The HCPS Representative or designee assigns a case manager for every child with an IEP. The case manager tracks the delivery of all services and reports to the HCPS Representative or designee in a timely manner if any service is not being delivered in accordance with the IEP according to procedures for **Child Tracking System in Child Find**. If an identified educational need addressed on an IEP requires a service not currently or directly available from HCPS, or when a service is not being provided, the HCPS Representative or designee notifies the DoSE to make arrangements for delivery of services. These arrangements may include expanding current services, starting new services, or contracting for services.

If the HCPS Representative or designee and DoSE are unable to arrange for delivery of an identified service, the DoSE may contact KDE for assistance, including obtaining training and support in the identified area of need. The DoSE maintains records (correspondence, newspaper advertisements, etc.) of efforts made to obtain needed services.

### **IEP Accessibility**

An LEA shall ensure that;

- (a) the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;
- (b) prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and
- (c) the specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.

707 KAR 1:320 Section 1 (6)  
34 CFR 300.323 (d) (1-2)

HCPS Representative shall ensure that the child's IEP is accessible to everyone who is responsible for its implementation and be informed of specific responsibilities related to implementing the IEP.

### **IEP Form**

Each ARC uses an IEP form provided by HCPS for recording the content of the IEP. If the form does not have enough space for any component of the IEP, the ARC uses additional pages to fully explain each component. This IEP form:

1. contains the components specified by state and federal laws and regulations; and
2. facilitates the flow of information for each of the planning phases.

### IEP Draft

Agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents.

1997 IDEA  
34 CFR Part 300 Appendix A, Q.32

When committee members come prepared with information related to their areas of expertise:

1. the HCPS Representative or designee makes the parents aware at the beginning of the meeting that any prepared information is for suggestion and open for review and discussion;
2. all information is discussed; and
3. committee decisions are made related to finalizing the components in the final IEP document. The IEP is developed and completed during an ARC meeting to ensure input from all members.

### **PRESCHOOL TRANSITION**

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

707 KAR 1:300 Section 1 (2-3)  
34 CFR 300.321 (f)

A description of how the lead agency under this part will notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law;

34 CFR 303.148 (b) (1)

Early Intervention Programs planning process involves the current service providers, the family of the child, and a representative of HCPS. The DoSE or designee participates in meetings related to transitional planning when early intervention program representatives contact HCPS about a child who may need preschool special education services. During the meeting, the DoSE or designee explains to the parent that services are available through HCPS and asks the parent if continued services are wanted. The DoSE or designee explains that not all children receiving early intervention services are eligible for special education and related services.

The DoSE or designee keeps a copy of the transition conference summary and/or Individual Family Service Plan (IFSP) for the HCPS' record of the child.

In the case of a child who may be eligible for preschool services under Part B of the Act, with the



approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive.

34 CFR 303.148 (b) (2) (i)

Each State must ensure that the obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and an IEP or an IFSP is in effect for the child by that date. If a child's birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

34 CFR 300.101 (b)

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

707 KAR 1:320 Section 1 (7)

34 CFR 300.323 (b)

HCPS participates in meetings initiated by early intervention service providers to plan for a child's transition from the early intervention program to preschool special education services available through HCPS. If the parent of a preschool age child chooses to pursue services for a child, HCPS implements a plan for the child's programmatic transition to HCPS' services including:

1. when the child will be referred to HCPS;
2. when the parent will register the child to attend HCPS;
3. when the service provider will transmit child evaluation data to HCPS;
4. the timeframe for the ARC meeting to determine if evaluation information is adequate and if the child is eligible for special education and related services; and
5. how the early intervention service provider will assist in making the transition from the early intervention program to the HCPS.

If the parent of a preschool age child chooses to pursue services, HCPS arranges an ARC meeting according to **ARC Membership** and **Notice of ARC Meetings** in procedures for **Procedural Safeguards**.

ARC determines if evaluation data is sufficient according to procedures for **Evaluation and Eligibility**.

If the ARC determines the child is eligible for special education and related services, the ARC:

1. develops an IEP according to procedures for **IEP**;
2. makes a placement decision according to procedures for **ARC Determination Of Placement** in procedures for **Placement In The Least Restrictive Environment**; and
3. implements the IEP according to procedures for **Implementation And Service Delivery**.

If the parent chooses not to continue services for the eligible child, HCPS' involvement in the Early Intervention Program transitional planning process ends. Annually, the DoSE notifies the parent of the availability of preschool special education and related services until the child enters HCPS' primary program. The DoSE or designee records the parent's decision and child information on the Intake form and enters the information in the Child Tracking System according to **Child Tracking System** in procedures for

**Child Find.** The Intake Information form and copies of annual notices are filed in the education record of the child.

## **POSTSECONDARY TRANSITION SERVICES**

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

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

707 KAR 1:280 Section 1 (62)  
34 CFR 300.43

## **Individual Learning Plan**

Beginning with the graduating class of 2012, each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the program of studies, 704 KAR 3:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

704 KAR 3:305 (2)

HCPS follows district procedures for developing an Individual Learning Plan (ILP) for all students, prior to entry into high school. The ARC discusses the ILP prior to developing the IEP, including the student's course of study (from the ILP). This copy of the course of study is filed in the student's due process folder. A student's course of study is a multi-year description of coursework designed to achieve the student's desired postsecondary goals, from the student's current to anticipated exit year. The ARC uses information from the student's course of study and other components of the ILP (goals and plans, activities, experiences, awards, and assessments) to develop the IEP. The ILP is updated annually according to HCPS district procedures.

## **Age Appropriate Assessments for Transition Purposes**

By the child's 16<sup>th</sup> birthday, the IEP shall include:

- (a) appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment and where appropriate, independent living skills; and
- (b) the transition services (including the course of study) needed to assist the child in reaching these goals.

707 KAR 1:320 Section 7 (2)  
34 CFR 300.320 (b)

Annually, the ARC ensures that age-appropriate assessments are considered and/or updated to reflect the desired postsecondary outcomes. Transition assessment is the ongoing process of collecting data on the individual's needs, preferences, and interests related to the demands of current and future working, educational, living, and personal

and social environments. HCPS uses age-appropriate transition assessments that are formal and informal.

The ARC uses transition assessment information from the student's Individual Learning Plan (ILP) to begin the discussion of transition needs. The ARC also reviews information from other transition assessments which may include observations, task-analysis, surveys, interviews, interest inventories, self-determination assessments, and career aptitude assessments.

If a student elects not to attend the ARC meeting where postsecondary transition services are discussed, the ARC takes steps to ensure that the student's preferences and interests are considered. This information may be gained from an interview with the student.

### **Failure of an Agency (other than the HCPS) to Provide Transition Services**

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

707 KAR 1:320 Section 7 (4)  
34 CFR 300.324 (c) (1)

If an agency fails to provide a service identified by the ARC, the ARC documents attempts made to identify alternative strategies.

Alternative strategies to meet the student's transition objectives may include the identification of another funding source, referral to another agency, the public agency's identification of other district-wide or community resources that it can use to meet the student's identified needs appropriately, or a combination of these strategies.

A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of the agency.

707 KAR 1:320 Section 7 (5)  
34 CFR 300.324 (c) (2)

### **ORGANIZING THE MEETING TO DEVELOP, REVIEW, OR REVISE AN IEP**

Prior to the development, review, or revision of the IEP, 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 developing the IEP. If the IEP will be reviewed or revised, the HCPS Representative or designee asks the IEP implementers to bring progress data toward the IEP goals and benchmarks/objectives. The information may include oral or written statements of recommendations for priority needs, evaluation results, student progress, present levels, annual goals, benchmarks or objectives, and types of special education and related services. No member of an ARC presents a final IEP.

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.

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

- (a) upon initial referral or parent request for evaluation;
- (b) upon receipt of the first state written complaint;
- (c) upon 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.

707 KAR 1:340 Section 4 (1)  
34 CFR 300.504 (a)

The HCPS Representative, or designee asks the parent if they received a copy of the Procedural Safeguards (parent rights), and asks if the parent has questions or wants a review of the rights (according to **Procedural Safeguards**).

The steps for the development, review, and revision of the IEP include:

1. the Present Level of Academic Achievement and Functional Performance including the consideration of special factors;
2. prioritizing needs, and developing goals and benchmarks/objectives;
3. specifying the special education and related services, supplementary aids and services, program modifications, assessment accommodations, and supports for school personnel;
4. determining the extent of participation with non-disabled children in academic, nonacademic, and extracurricular activities;
5. determining beginning dates, frequency, location, and duration of services; and
6. determining the method for reporting progress toward the IEP goals and objectives, and a date for annual review of progress.

## Reaching Consensus

The ARC members try to reach consensus when developing, reviewing or revising an IEP. ARC members reach consensus by total agreement on an issue or by negotiating a compromise to which all members can agree. Before any decision is recorded on the IEP form, the HCPS Representative or designee summarizes the decision, and determines the level of agreement within the ARC.

If the parent and HCPS personnel cannot reach consensus or negotiate a compromise on a component of an IEP (initial, reviewed/revised), the HCPS Representative or designee documents any disagreement. The HCPS Representative or designee states the district's position and documents the position on the Conference Summary.

1. the ARC may develop an interim course of action in terms of services to which both parties can agree;
2. the HCPS Representative or designee advises the parent of the right to resolve differences through the due process procedures;

3. the HCPS Representative or designee proposes the use of mediation for resolving the difference; and
4. the summary recorder summarizes the points of disagreement and the interim course of action in the Conference Summary.

If any ARC member, other than the parent, disagrees with any part of the proposed IEP, the dissenting member(s) may attach a written statement to the Conference Summary giving the reasons for disagreement. The HCPS Representative or designee states the district's position explains that position in the Conference Summary.

If the parent and HCPS personnel cannot reach consensus on a component while reviewing or revising an IEP the last agreed upon IEP remains in effect until the disagreement is resolved. The existing IEP does not exceed 30 calendar days. The ARC reconvenes at an agreed upon time and date unless mediation or a due process hearing is requested or a complaint is filed according to procedures in **Procedural Safeguards**.

If mediation or a due process hearing is initiated by either the parent or HCPS because of disagreement over the IEP, or when a complaint is filed, HCPS does not change the IEP or placement of the child unless the parent and HCPS agree otherwise according to procedures in **Procedural Safeguards**.

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)  
34 CFR 300.323 (c) (1)

If the ARC does not complete the IEP at the meeting when initial eligibility is determined, the ARC members schedule a convenient date and time to continue the meeting to complete the IEP. A reconvened meeting is held within 60 school days of the receipt of the parent consent to evaluate, according to **Timelines** in procedures for **Procedural Safeguards**.

If the ARC members do not complete review and revision of the IEP, this is documented on the Conference Summary and the ARC schedules another meeting at an agreed upon date and time, within 30 days, and prior to the annual review date.

### **Prior to the ARC Meeting to Discuss the IEP**

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 IEP, teachers, related services providers, and the school psychologist may meet to gather and review existing data collected about the child and make recommendations to the ARC.

## DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM

An ARC shall not be required to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

707 KAR 1:320 Section 5 (6)  
34 CFR 300.320 (d) (2)

### Identifying Information Regarding the Child

Step 1 The IEP contains identifying information, which may include the following:

- a. name (first, middle and last name of child);
- b. date of birth (month, day, and year);
- c. identification number;
- d. school implementing IEP (the school in which the child is enrolled; the program or agency if the child is under 4 years of age);
- e. home school (school the child would attend if enrolled in school and not disabled);
- f. grade level; and
- g. date IEP completed (the day, month, and year when the ARC members agree all components of the IEP are complete).

### Consideration of Special Factors

An ARC shall:

- (a) in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies and supports, to address that behavior;
- (b) in the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- (c) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- (d) consider the communication needs of the child;
- (e) in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- (f) consider whether the child requires assistive technology.

All these factors shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.

707 KAR 1:320 Section 5 (2-3)  
34 CFR 300.324 (a) (2)

See also KRS 158.282, Instruction of all blind students in the use of Braille.

Once the ARC has considered all of these factors, the ARC shall include a statement on the IEP indicating the needs for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).

707 KAR 1:320 Section 5 (4)  
34 CFR 300.324 (a) (2)

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

707 KAR 1:290 Section 7 (1)

34 CFR 300.105 (a)

On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.

707 KAR 1:290 Section 7 (2)

34 CFR 300.308 (b)

**Step 2** The ARC considers any special factors for the child (i.e., behavior concerns, Limited English Proficiency, blind/visually impaired, communication needs, deaf/hearing impaired and assistive technology needs) that need to be addressed.

### **Present Levels of Academic Achievement and Functional Performance (Present Levels)**

An ARC shall consider in the development of an IEP:

- (a) the strengths of the child and the concerns of the parents for enhancing the education of their child;
- (b) the results of the initial or most recent evaluation of the child;
- (c) as appropriate, the results of the child's performance on any general state or district-wide assessments program; and
- (d) the academic, developmental, and functional needs of the child.

707 KAR 1:320 Section 5 (1)

34 CFR 300.324 (a) (1)

The IEP for each child shall include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum, as provided in the Kentucky Program of Studies, 707 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

707 KAR 1:320 Section 5 (7) (a)

34 CFR 300.320 (a) (1)

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 3** The ARC describes the child's performance in the following areas: general intelligence; communication; academic performance; health, vision, hearing, and motor; social and emotional; and transition by:

- a. using student performance data, evaluation information, and progress data;
- b. reviewing the curriculum documents to determine the child's performance within the curriculum;

- c. indicating the areas in which the student is performing commensurate with peers;
- d. determining how the child's disability affects involvement and progress in the POS/curriculum; or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- e. determining the child's unique needs in order to prepare them for further education, employment, and independent living.

**Statement of Transition Service Needs (for students 8<sup>th</sup> grade or 14 and older)**

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

707 KAR 1:320 Section 7 (1)

The ARC annually reviews, and revises as needed, the statement of transition service needs in the Present Levels. The focus is typically instruction beginning at ages 14 and 15, then at age 16 expands to include needs as they relate to progress towards post-secondary goals. The statement of transition service needs is developed to meet the postsecondary activities related to the Kentucky Program of Studies, and is based on results of formal and informal assessments, the ILP, and the transition domains.

Step 4 The ARC reviews the ILP and assessment information and determines the child's unique needs to prepare them for further education, employment, and independent living. The ARC documents the statement of transition service needs in the Present Levels.

**Transition Needs and Services (by the student's 16<sup>th</sup> birthday)**

**Postsecondary Goals and Transition Services**

By the child's 16<sup>th</sup> birthday, the IEP shall include:

- (a) appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment and where appropriate, independent living skills; and
- (b) the transition services (including the course of study) needed to assist the child in reaching these goals.

707 KAR 1:320 Section 7 (2)

34 CFR 300.320 (b)

Postsecondary goals are defined as those goals that a student hopes to achieve after leaving high school. Based on the assessment information, the ARC develops measurable postsecondary goals for employment, education/training, and as needed, independent living and documents these on the IEP.

The ARC also documents on the IEP that the measurable postsecondary goals were based on age-appropriate transition assessment(s) by indicating how they determined the student's preferences and interests or which transition assessments were used.



- Step 5 The ARC reviews the ILP, statement of transition service needs, and assessment information to determine how to assist the student in reaching the postsecondary goals. The ARC:
- a. reviews the age-appropriate transition assessments and documents on the IEP how the student's interests and preferences were considered;
  - b. develops measurable postsecondary goals in the areas of employment, education/training, and as needed, independent living;
  - c. determines the transition services in the areas of instruction, community experiences, employment and other post-school adult living objectives, and the acquisition of daily living skills and functional vocational evaluation;
  - d. determines if a student needs a related service to facilitate movement from school to post-school activities; and
  - e. determines if the student will complete a high school program within four (4) years.

If the ARC determines another agency isn't needed for transition planning, the HCPS Representative or designee documents the decision on the Conference Summary.

The ARC determines if it is likely that another agency will provide or pay for any transition services. Other agencies or services may include postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.

If the ARC determines that it is likely that another agency will provide or pay for transition services, the HCPS Representative or designee documents on the IEP:

- a. the agency that may be responsible;
- b. the responsibilities of each agency, linkages, or both; and
- c. a description of the transition services to be provided.

If it is determined likely that another agency may provide or pay for transition services as described above, a representative of that agency is invited to the next ARC meeting. Parent (or eligible student) consent is obtained for invitation to the outside agency following procedures for **Consent for Release of Information for Transition Services**.

#### 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).

KRS 160.720 (1)

34 CFR 300.321 (b) (3)

34 CFR 300.622 (b) (2)

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

707 KAR 1:320 Section 3 (4)

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.

### Student Reaching the age of Majority

At least one year prior to the child reaching age of majority, the IEP shall include a statement that the child has been informed of the child's rights under 707 KAR Chapter 1, and that the rights will transfer to the child upon reaching the age of majority.

707 KAR 1:320 Section 5 (14)  
34 CFR 300.320 (c)  
34 CFR 300.520

Step 6 At the annual review meeting prior to the student's eighteenth (18<sup>th</sup>) birthday, the HCPS Representative or designee gives the parent and the student notice (according to **Rights Of The Eligible Student** in procedures for **Confidentiality**) that the rights of the parent and access to educational records transfer from the parent to the student upon the student's eighteenth birthday. The HCPS Representative or designee documents the statement on the IEP.

The HCPS does not disclose educational records of a youth over the age of eighteen (18) to the parent without:

1. the youth's written consent;
2. a court order; or
3. proof that the youth is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954.

### **Developing Measurable Annual Goals, Including Benchmarks or Objectives**

The IEP for each child shall include:

- (b) a statement of measurable annual goals, including academic and functional goals, designed to:
1. meet the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the Kentucky Program of Studies, 707 KAR 3:303, or for preschool children, as appropriate, to participate in appropriate activities; and
  2. meet the child's other educational needs that result from the disability.

707 KAR 1:320 Section 5 (7) (b)  
34 CFR 300.320 (a) (2)

The HCPS shall use benchmarks or short-term objectives for a child's IEP.

The ARC reviews the Present Levels to prioritize the skills and/or content knowledge most important for the student to acquire in the next twelve months. The ARC considers:

- a. student strengths and interests
- b. amount of time left in school
- c. parent, teacher, and student concerns (academic and/or behavioral)
- d. skills needed to make progress towards the student's postsecondary goal(s)

Step 7 Based on the prioritized areas, the ARC writes measurable goals using Kentucky's Learning Goals and Academic Expectations, the Kentucky Program of Studies or HCPS Curricular Documents.

The ARC uses the curricular resources to develop the goals benchmarks and/or objectives to determine the focus for:

- a. the student's instruction; and
- b. meeting the child's other educational needs (including needs as they relate to progress towards postsecondary goal(s)).

### Cross Reference with Postsecondary Goals

Percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the child to meet the postsecondary goals.

State Performance Plan (SPP)  
Indicator 13

The statutory language related to secondary transition is complex and uses terms such as "coordinated set of activities," "designed in a results-oriented process," and "appropriate measureable postsecondary goals." The language used in the indicator [SPP Indicator 13] was an attempt to simplify the secondary transition terminology and incorporate other IEP requirements.

Part B Indicator 13 APR FAQ  
(Dated 11/30/07)

While "a statement of measurable annual goals" (IDEA 2004, Part B, 614, [d][1][A][i][II]) are a required part of a student's IEP, there does not need to be a separate annual goal for each postsecondary goal. Logically, when writing...the team should ask "what postsecondary goal(s) does this annual IEP goal support?"

NSTTAC Indicator 13 Checklist FAQ  
(Approved by OSEP 11/20/06)

Step 8 For the IEP beginning when the student turns 16 years old, the ARC indicates which postsecondary goal each annual goal supports.

### Methods of Measurement

An IEP shall include a statement of:

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

707 KAR 1:320 Section 5 (13) (a)  
34 CFR 300.320 (a) (3) (i)

Step 9 The ARC determines the methods needed to measure/evaluate the goals, benchmarks and/or objectives to document the student's success and progress toward the annual goals.

### Reports to Parents

An IEP shall include a statement of:

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

707 KAR 1:320 Section 5 (13) (b)  
34 CFR 300.320 (a) (3) (ii)

Step 10 The ARC documents on the IEP when the parents will be regularly informed of the progress of their child (e.g., mid-term, six weeks, nine weeks, quarterly).

### Specifying Implementers

Step 11 The ARC assigns at least one person, listed by title/role, to plan and carry out specially designed instruction to help the child achieve the benchmarks/objectives in the IEP. ARC members select each implementer based on the services described and the qualifications needed for providing the service.

The implementer, who is qualified to deliver instruction, is responsible for instructional planning as well as collecting, monitoring, and maintaining progress information. If the parent agrees to assist in implementation, the ARC members do not assign the parent as sole implementer.

The HCPS Representative/case manager or designee informs each person responsible for implementation of the IEP of the specific responsibilities related to implementation by asking the implementers to sign an assurance statement. HCPS provides appropriate training for all teachers who implement IEPs.

### **IEP Services: Specially Designed Instruction, Supplementary Aids and Services, Assessment Modifications, Related Services, Program Modifications, and Support for School Personnel**

An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child. There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:

- (a) advance appropriately toward attaining the annual goals;
- (b) be involved and make progress in the general curriculum;
- (c) participate in extracurricular and other nonacademic activities; and
- (d) be educated and participate with other children with or without disabilities.

707 KAR 1:320 Section 5 (8)  
34 CFR 300.320 (a) (4)

A LEA shall ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, career and technical education, and other educational services.

707 KAR 1:290 Section 4  
34 CFR 300.107 (a)

All children, including children with disabilities, must be otherwise eligible for participation and thus meet established criteria for the specific programs, services and curriculum.

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

707 KAR 1:320 Section 7 (3)  
34 CFR 300.43 (b)

An IEP shall contain a statement of any individual accommodations to be provided the child in order to participate in the state or district-wide assessment. These accommodations shall be based on the requirements contained in 703 KAR 5:070, Inclusion of Special Populations in the State-Required Assessment and Accountability Programs.

707 KAR 1:320 Section 5 (10)  
34 CFR 300.320 (a) (6) (i)

If the ARC determines that the child meets the criteria for participation in the alternate portfolio, as provided in 703 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision.

707 KAR 1:320 Section 5 (11)  
34 CFR 300.320 (a) (6) (ii)

An LEA shall be responsible for including children with disabilities in the state-wide assessment as provided in 703 KAR Chapter 5.

707 KAR 1:320 Section 9 (2)  
34 CFR 300.320 (a) (6) (i)

Step 12 The ARC reviews the student performance information, the Present Levels, and the goals, benchmarks, and/or objectives to determine the appropriate services needed to implement the IEP.

The ARC documents on the IEP the following:

Specialty Designed Instruction

Changes in content, methodology, or instruction needed for the student to make progress in the general curriculum.

Supplementary Aids and Services

Aids, services, and supports provided to the student in general education classes or other educational settings to enable the student to be educated with nondisabled students.

Participation in State-Wide Assessment

Appropriate accommodations needed by the student in order to participate in state or district-wide assessment. The ARC documents the decisions on the Accommodations Determination Form (see IEP RESOURCES). If the student qualifies for the alternate

assessment system, (according to Determining Certificate of Attainment in procedures for **Implementation and Service Delivery**) the ARC documents the decision on the IEP.

### Related Services

If specially designed instruction alone will not facilitate progress toward the IEP goals, benchmarks and objectives, the ARC documents the answers to the following:

What related service(s) is needed by the student to:

- benefit from, participate in, or be provided specially designed instruction?
- facilitate access to public school?
- be educated and participate with other students, with or without disabilities?

If the ARC determines that a student needs a related service in order to facilitate transition from school to postsecondary activities, the ARC documents this service as a related service.

### Program Modifications and Supports for School Personnel

Specialized training, use of school time, or use of school staff provided to personnel or parents is documented on the IEP.

### Beginning Dates, Duration, Frequency, and Location of Services

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

707 KAR 1:320 Section 5 (12)  
34 CFR 300.320 (a) (7)

- Step 13 The ARC reviews the services determined and documents:
- a. the projected date for the beginning of each service on the IEP;
  - b. how long the service(s) will be provided for each type of service specified on the IEP;
  - c. how often the student will receive each service on the IEP; and
  - d. where the services(s) will be provided (i.e., regular education, special education, or both.)

### **Participation in the Regular/General Education Program**

An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes.

707 KAR 1:320 Section 5 (9)  
34 CFR 300.320 (a) (5)

- Step 14 All children, including children with disabilities, must be otherwise eligible for participation and thus meet established criteria for the specific programs, services and curriculum.

### **Physical Education**

A LEA shall make available to every child with a disability:

- (a) physical education services, specially designed if prescribed in the child's IEP; or
- (b) the opportunity to participate in the regular physical education program available to children without disabilities.

An LEA is not required to make available physical education services to a child with a disability if:

- (a) the child is enrolled full time in a separate facility in which case the agency responsible for the education of the child in that facility shall ensure the child receives appropriate physical education; or
- (b) the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

707 KAR 1:290 Section 6 (1-2)  
34 CFR 300.108

Step 15 The ARC members decide, based on data collected and the Present Level descriptions in the IEP, if the child is to receive physical education in the general education classes, with or without supplementary aids and services, or specially designed physical education. If goals/benchmarks/objectives include PE, then the ARC describes the specially designed instruction or adaptive PE in the IEP.

### Review Date

An LEA shall ensure that the ARC:

- (a) reviews each child's IEP periodically, but no less than annually, to determine whether annual goals are being achieved; and
- (b) revises the IEP in accordance with 34 CFR 300.324 (b) (1) (ii).

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

Step 16 The ARC indicates on the IEP the anticipated date for the annual review of the IEP.

### Review and Revision of the IEP

The appropriate HCPS Representative shall ensure that the ARC:

- (a) reviews each child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and
- (b) revises the IEP as appropriate to address:
  1. any lack of expected progress toward the annual goals;
  2. any lack of expected progress in the general education curriculum, if appropriate;
  3. the results of any reevaluation;
  4. information about the child provided by, or to, the parents;
  5. the child's anticipated needs; or
  6. other matters.

### IEP COMPLETED

A LEA shall give the parents a copy of the child's IEP at no cost to the parent.

707 KAR 1:320 Section 4 (8)  
34 CFR 300.322 (f)

When all components of the IEP are complete, the HCPS Representative or designee gives a copy of the IEP, Conference Summary, and any other appropriate documents to the parent. The assigned case manager files the originals of the IEP, Conference Summary, and other forms in the due process folder of the child.

If the parent does not attend the ARC meeting to develop the initial IEP, the HCPS Representative or designee sends a copy of the IEP, Conference Summary, and Consent for Special Education and Related Services form to the parents. HCPS does not implement the IEP until the signed Consent for Special Education and Related Services is received.

If the parent does not attend a meeting to review or revise the IEP, the HCPS Representative or designee sends a copy of the IEP and Conference Summary to the parents, and services begin as indicated in the revised IEP. The ARC documents attempts to encourage parent participation and attendance at the meeting according to Methods to Ensure Parent Participation in procedures for **Procedural Safeguards**.

## **EXTENDED SCHOOL YEAR (ESY)**

An LEA shall ensure that extended school year services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis. In making this determination, the LEA shall not:

- (1) limit the provision of extended year services to a particular category(s) of disability; or
- (2) unilaterally limit the type, amount, or duration of those services.

707 KAR 1:290 Section 8  
34 CFR 300.106

An extended school year program is provided when the recoupment time for a child with a disability exceeds that of similar age peers who are not disabled and who experience the same lapse in instruction. An extended school year program extends beyond the regular school year for the purpose of maintaining the child's current skill level which, without continued instruction, would be lost or would require a longer than reasonable (4-6 weeks) time to regain those skills. ESY services are not designed to teach new skills, prevent normal amounts of regression, or allow the child to make additional progress.

## **Documentation of Regression and Recoupment Time**

The implementers collect progress data relative to the IEP goals/benchmarks/objectives taught to demonstrate student performance and trends. Measurement is taken at the following times:

1. the end of instruction (e.g., prior to summer break);
2. the beginning of instruction after a lapse of instructional time (e.g., return from summer break); and
3. at regular intervals until the performance level is equal to the performance when the lapse in instruction time began.

If there have been no breaks in instruction or analysis of the data fails to validate regression/recoupment, the IEP implementers may submit the following data to determine the need for extended school year services:



1. tests and observation data collected over a period of time; and
2. the opinion of professionals (e.g. IEP implementers, school staff)

### **ARC Analysis of ESY Data**

If the ARC determines there is a need for ESY, the ARC documents on the Conference Summary, ESY form and/or IEP the goals/benchmarks/objectives and/or services to be delivered. Documentation necessary for ESY services does not require the development of an IEP specifically for ESY.

The HCPS Representative or designee, in consultation with the DoSE, makes arrangements for the child to receive extended school year services according to the ARC decision. If the ARC determines the child is not eligible for ESY, the ARC's decision and rationale are documented in the Conference Summary. The HCPS Representative or designee gives a copy of the Conference Summary to the parent.

## **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**

### **ARC DETERMINATION OF PLACEMENT**

A child's placement shall be:

- (a) determined at least annually;
- (b) based on the child's IEP; and
- (c) as close as possible to the child's home.

707 KAR 1:350 Section 1 (6)  
34 CFR 300.116 (b)

The ARC determines placement in the least restrictive environment for a child with a disability on an annual basis. The placement decision is based on the IEP of the child, the continuum of placement alternatives, and after all parts of the IEP has been completed. The placement should be as close as possible to the child's home.

### **Prior to the ARC Meeting to Discuss Placement in the Least Restrictive Environment**

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 placement, school staff, district staff, and related services providers may meet to gather and review existing data collected about the child and make recommendations to the ARC.

### **ORGANIZING THE MEETING TO MAKE A PLACEMENT DETERMINATION**

Prior to making a placement decision, 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 to bring data or information about the child to use in making a placement decision. The HCPS Representative or designee brings to the meeting information about the continuum of placement alternatives, the types of educational programs and services, academic programs, non-academic services and activities, and extra-curricular activities available to HCPS students.

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.

Upon completion of the IEP, the HCPS Representative, or designee or other ARC member describes the decision making process for making a placement decision which may include the following steps:

1. review of the continuum of placement alternatives available in the district;
2. selection of an appropriate placement decision;
3. harmful effects the placement may have on the child or services;
4. participation with children who are not disabled including non-academic and extra-curricular activities; and
5. consideration of placement in the school the child would attend if not disabled.

## **Making a Placement Decision**

### Current and Complete IEP

In determining the educational placement of a child with a disability, the LEA shall ensure that the placement decision is made by the ARC in conformity with the least restrictive environment provisions.

707 KAR 1:350 Section 1 (5)

34 CFR 300.116 (a) (2)

Step 1: The ARC reviews the IEP to ensure the IEP is appropriate and current.

### Continuum of Placement Alternatives

A LEA shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum shall include the alternative placements of instruction in:

- (a) regular classes;
- (b) special classes;
- (c) special schools;
- (d) home instruction; and
- (e) hospitals and institutions.

707 KAR 1:350 Section 1 (2-3)

34 CFR 300.115 (a), (b) (1)

The LEA shall make provision for supplementary services to be provided in conjunction with regular class placement.

707 KAR 1:350 Section 1 (4)

34 CFR 300.115 (b) (2)

## Selecting a Placement Option

Each time the ARC makes a placement decision, the ARC first considers full-time placement in general education classes in the school the child would attend if not disabled. If at any time in the process the ARC determines a placement is not appropriate, the ARC selects an optional placement and repeats the placement decision-making process.

The ARC makes placement decisions based on each child's individual abilities and needs, and not solely on factors such as:

1. the category of disability of the child;
2. availability of special education and related services;
3. configuration of the service delivery system;
4. availability of space; or
5. administrative convenience.

Placement Option	Description of Placement
Full time General Education	Participation <i>only</i> in the general education classroom/environment. This may include general education with supplementary aids and services, and/or general education with specially designed instruction, which may include collaboration.
Part time General Part time Special Education	Participation in <i>both</i> general and special education classroom/environments. This is for <i>any</i> time the student is pulled out of general education, regardless of the amount of time.
Full time Special Education	Participation <i>only</i> in the special education classroom. This includes a school environment where the student participates only with students with disabilities.

Step 2: The ARC uses the current IEP, and as appropriate student performance information, evaluation information, progress data, and the transition plan, to determine if all components of the IEP can be implemented in the proposed placement.

### Consideration of school the child would attend if not disabled

Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he would attend if nondisabled.

707 KAR 1:350 Section 1 (7)  
34 CFR 300.116 (c)

The child shall be educated in the school he/she would attend if nondisabled, unless the IEP cannot be implemented in that school. If the IEP cannot be implemented in the school the child would attend if nondisabled the ARC discusses and proposes a similar level school or location where the child's IEP can be implemented.

If the IEP can be implemented in the proposed placement, the placement is appropriate.

If the IEP cannot be implemented in the proposed placement, the ARC decides what modifications can be made to the placement options to implement the IEP (see procedures for Modifications to the General Education Environment in Placement in the Least Restrictive Environment).

### Harmful Effects

In selecting the least restrictive environment, consideration shall be given to any potential harmful effects on the child or on the quality of services that he needs.

707 KAR 1:350 Section 1 (8)  
34 CFR 300.116 (d)

Step 3: The ARC uses data collected over a period of time, including written results of previous interventions, teacher observations, evaluation information, IEP Present Levels, environmental influences, progress data, social competence, and medical evaluation information to identify:

- a. factors in the placement option which may keep the child from making progress in the general curriculum;
- b. behaviors which may significantly interfere with other children making progress in the general curriculum;
- c. factors in the placement option which may have a harmful effect on the child; and
- d. other factors in the placement option that may adversely affect the quality of services needed by the child.

The ARC determines what modifications are necessary to address the harmful effects issues in the placement option (see procedures for Modifications to the General Education Environment in Placement in the Least Restrictive Environment).

If modifications cannot be made, the ARC selects another placement option and repeats the steps.

### Participation in Academic, Nonacademic, and Extracurricular Activities with Children Who Are Not Disabled

An LEA shall ensure that to the maximum extent appropriate, children with disabilities, including children placed by the LEA in public or private institutions or other care facilities are educated with children who are nondisabled. The LEA shall ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if education in the regular education environment with the use of supplementary aids and services cannot be satisfactorily achieved due to the nature or severity of the disability.

707 KAR 1:350 Section 1 (1)  
34 CFR 300.117

A LEA shall ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, career and technical education, and other educational services.

707 KAR 1:290 Section 4  
34 CFR 300.107 (a)

All children, including children with disabilities, must be otherwise eligible for participation and thus meet established criteria for the specific programs, services and curriculum.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, a LEA shall ensure that a child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of the child.

707 KAR 1:350 Section 1 (10)  
34 CFR 300.117

A LEA shall take steps, including the provision of supplementary aids and services as determined appropriate and necessary by the child's ARC, to provide all children with disabilities the nonacademic and extracurricular services and activities which give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include: counseling services; athletics; transportation; health services; recreational activities; special interest groups or clubs sponsored by the LEA; referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.

707 KAR 1:290 Section 5  
34 CFR 300.107 (b)

HCPS ensures that all children, including children with disabilities, meet the established criteria and eligibility for participation in academic, nonacademic, and extracurricular activities.

Step 4: The ARC discusses the child's participation in academic, nonacademic and extracurricular activities and determines what supplementary aids and services are to be provided for the child to participate with children who are not disabled.

The ARC specifies any conditions, modifications, or adaptations for participation in the general programs and activities with children who are not disabled according to Modifications to the General Education Environment in procedures for **Placement in the Least Restrictive Environment**.

If modifications cannot be made, the ARC selects another placement option and repeats the steps.

#### Modifications to the General Education Environment

A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

707 KAR 1:350 Section 1 (9)  
34 CFR 300.116 (e)

For each step, the ARC specifies on the Conference Summary any needed changes in the general education environment to implement the IEP. Changes may include:

1. changing the physical environment (e.g., preferential seating, special lighting);
2. using supplementary aids and services (e.g., large print books);
3. implementing different modes of instruction (e.g., cooperative learning, behavioral instruction, modeling);
4. adapting the curricula (e.g., learning strategies, social skills); or
5. training personnel (e.g., special instruction techniques, positive behavior

interventions, strategies, etc.).

### **Placement Completed**

When all components of the IEP are complete, and the placement decision is made, the HCPS Representative or designee gives a copy of the IEP and the Conference Summary to the parent. The originals of the IEP and Conference Summary are filed in the records of the child.

If the parent does not attend the ARC meeting to develop the initial IEP, the HCPS Representative or designee sends a copy of the IEP, Conference Summary, and Consent for Special Education and Related Services forms to the parents. HCPS does not implement the IEP until the signed Consent for Special Education and Related Services is received.

If the parent does not attend an ARC meeting to review or revise the IEP, the HCPS Representative or designee sends a copy of the IEP and Conference Summary to the parents, and services begin as indicated on the revised IEP (see also procedures in **PROCEDURAL SAFEGUARDS for Denial or Revocation of Parent Consent**).

### **ARC PLACEMENT OF A CHILD IN ANOTHER PUBLIC SCHOOL, PRIVATE SCHOOL, OR FACILITY**

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

707 KAR 1:290 Section 1 (2)  
34 CFR 300.146 (b-c)

If the ARC is considering placement in another public school, private school or facility, or a location other than a HCPS school or facility, the HCPS Representative or designee contacts the DoSE, who then contacts KDE, if necessary, to determine that the facility meets state standards. The ARC requests the DoSE attend an ARC meeting for the consideration of placement options. Prior to the ARC meeting, the DoSE contacts programs that provide the type of services specified on the IEP. The DoSE inquires regarding:

1. the possible referral of the child to the program; and
2. the agency's or organization's willingness to provide the services specified by the IEP.

When the DoSE identifies a program that provides the type of services specified on the IEP, the DoSE schedules an ARC meeting to address the referral of the child to the school program.

### **Placement in Private Schools or Facilities**

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

707 KAR 1:320 Section 8 (1)  
34 CFR 300.325 (a) (1)

The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private

school or facility, including individual or conference telephone calls.

707 KAR 1:320 Section 8 (2)  
34 CFR 300.325 (a) (2)

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

707 KAR 1:320 Section 8 (3)  
34 CFR 300.325 (b)

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

707 KAR 1:320 Section 8 (4)  
34 CFR 300.325 (b) & (c)

The DoSE invites a representative of the program to participate in the ARC meeting. The representative may participate through attendance at meetings, written communication, individual calls, or conference calls.

The ARC members follow the procedures for **ARC Determination of Placement in Placement in the Least Restrictive Environment.**

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **Contractual Provisions for Students Placed in Another Public School, Private School or Facility in Placement in the Least Restrictive Environment** to arrange and provide services.

### **Residential Placement**

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

707 KAR 1:290 Section 2  
34 CFR 300.104

If the ARC determines a private residential educational program is needed to provide the student FAPE, the HCPS Representative or designee contacts the DoSE and requests that the DoSE attend an ARC meeting for the consideration of placement options.

The ARC members follow the procedures for **ARC Determination of Placement in Placement in the Least Restrictive Environment.**

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **Contractual Provisions for Students Placed in Another Public School, Private School or Facility in Placement in the Least Restrictive Environment** to arrange and provide services.

### **Placement at KSB or KSD**

Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident

LEA, shall ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC.

707 KAR 1:320 Section 1 (2)

The ARC may consider placement of a child with a visual impairment at the Kentucky School for the Blind (KSB) and placement of a child with a hearing impairment at the Kentucky School for the Deaf (KSD).

If the ARC determines placement is needed at KSB or KSD to provide the student FAPE, the HCPS Representative or designee contacts the DoSE and requests that the DoSE attend an ARC meeting for the consideration of placement alternatives.

The HCPS DoSE will be responsible for inviting a representative of KSB or KSD to the ARC meeting and for all paperwork for the initial placement, including the IEP, notice of proposed and refused action, etc. If placement occurs, the HCPS will ensure that copies of special education records and cumulative records are made available to KSB or KSD personnel. After initial placement, KSB/KSD will be asked to be responsible for maintaining the records of the child and copies made available to HCPS' DoSE.

The ARC members follow the procedures for **ARC Determination of Placement in Placement in the Least Restrictive Environment**.

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **Contractual Provisions for Students Placed in Another Public School, Private School or Facility in Placement in the Least Restrictive Environment** to arrange and provide services.

#### Transportation to KSB or KSD

If a child of school age is admitted for resident instruction at the Kentucky School for the Deaf (KSD) or the Kentucky School for the Blind (KSB), the district in which the child resides shall provide transportation to and from the school on a regularly scheduled basis, at weekly intervals while the child is enrolled, either by individual district or in cooperation with other school districts on a regional basis. Students who live more than two hundred (200) miles from the school they attend are not required to go home more than twice each month.

KRS 157.280 (4)

Students follow the transportation schedule and participate in the weekend activities for students who remain at school according to policies established by KSD or KSB and approved by the State Board of Education.

If a child of school age is admitted as a day school pupil for instruction at KSB or KSD, the district in which the child resides may provide transportation to and from the school on a daily basis, either by individual district or in cooperation with other school districts on a regional basis. School districts providing this transportation shall be reimbursed from the transportation fund of the foundation program at the same rate per trip as that which is calculated under subsection (4) of this section.

KRS 157.280 (5)

The DoSE, in consultation with the Director of Transportation, makes arrangements for regional transportation planning when feasible and obtains approval from the State Board of Education according to procedures provided by the Kentucky Department of Education (KDE).



## Other State Agencies Responsible for Education

State agencies charged with the responsibility of providing educational services to children with disabilities within their care shall provide those services in accordance with 707 KAR Chapter 1.

707 KAR 1:290 Section 1 (3)  
34 CFR 300.118

The Cabinet for Families and Children and the Department of Juvenile Justice are State agencies responsible for providing educational services to children with disabilities. These agencies may contract with local school districts for the provision of educational services, or may hire staff to provide such services.

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **Contractual Provisions for Students Placed in Another Public School, Private School or Facility in Placement in the Least Restrictive Environment** to arrange and provide services.

### **CONTRACTUAL PROVISIONS FOR STUDENTS PLACED IN ANOTHER PUBLIC SCHOOL, PRIVATE SCHOOL OR FACILITY**

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

- (a) is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;
- (b) is provided an education that meets the standards of the LEA including general curriculum standards; and
- (c) has all the rights of any child with a disability served by the LEA.

707 KAR 1:320 Section 8 (5)  
34 CFR 300.146

If a child with a disability is placed by the ARC in a program outside of HCPS, the DoSE verifies that:

1. services are provided in conformance with the IEP;
2. services are provided at no cost to the parent;
3. standards that apply to education provided by state and local education agencies are met;
4. the child has all the rights of any child with a disability served by HCPS;
5. during the time that the placement in another program is being developed, HCPS is responsible for the provision of FAPE to the child; and
6. implementation of the terms specified in the contract or agreement are monitored.

## Transportation

If a local school district's admissions and release committee determines that a child requires placement in a special education program operated by another county or independent district or private organization, the resident local school district shall assume responsibility for the payment of the costs incurred in educating the child. The school board of the school district in which any child resides shall pay for his transportation to and from the program in the other school district or the private organization. However, if the school board of the other district or the private organization providing the program also provides transportation, the cost of transportation shall be included in the total cost.

KRS 157.280 (2)

## Attendance

If a local school district, under the provisions of KRS 157.360 (6) enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

702 KAR 7:125 Section 11

The HCPS develops a contractual arrangement with a program consistent with the beginning dates in the IEP. If another program accepts a child with a disability from HCPS, the contract specifies that the receiving program will:

1. provide special education and related services as specified on the IEP including:
  - a. each implementer designs and initiates instructional plans for accomplishing IEP goals, benchmarks/objectives;
  - b. each implementer monitors and collects documentation of student progress; uses measurement techniques specified in the IEP to measure progress of the goals, benchmarks/objectives; and reports progress toward achievement of goals, benchmarks/objectives on an on-going basis, at least as often as reported for all students;
2. make sure that the child and parent are afforded all rights and protections according to Administrative Regulations for Exceptional Children;
3. notify HCPS of the need to initiate and conduct ARC meetings;
4. monitor and evaluate the IEP at intervals specified on the IEP;
5. forward written results of monitoring and evaluation of the IEP to the parent and HCPS;
6. participate in ARC meetings convened by HCPS;
7. make sure that special education and related services are provided by qualified personnel; and
8. monitor and report attendance to HCPS at the close of each month.

Disputes between HCPS and other agencies are resolved according to the policies and procedures specified in Kentucky's State Plan approved under Part B of the Individuals with Disabilities Education Act (IDEA).

Educational records, copies of contracts, agreements, and correspondence with the service provider are maintained by the DoSE or designee.

## Payment for Services

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

707 KAR 1:290 Section 1 (4)  
34 CFR 300.103 (c)  
KRS 157.280 (1)

If the ARC determines that the child requires placement in a special education program operated by another county or independent district, or a private school or facility, HCPS maintains responsibility for the payment of the costs incurred in educating the child.

If the child is placed in a parochial school, HCPS uses federal funds to pay for the cost of the placement.

If HCPS provides a program by contract with another county or independent district, or private organization that maintains a special education program approved by the State Board of Education, HCPS shares the total cost of the special education program in accordance with a contract agreement between the agency and HCPS.

## **CHANGE IN ELIGIBILITY FOR FAPE**

A "change in eligibility for FAPE" means that the child is either entering or exiting special education and related services.

A change in eligibility for FAPE includes:

1. initiation of special education and related services;
2. release due to concluding special education and related services and resuming full-time general education services;
3. graduation with a regular diploma; and
4. exceeding the age of eligibility for FAPE.

## **Initiation of Special Education and Related Services**

The ARC initiates special education and related services according to **Developing the Individual Education Program** in procedures for **IEP** and **ARC Determination of Placement** in procedures for **Placement in the Least Restrictive Environment**.

## **Release from Special Education and Related Services**

An LEA shall evaluate a child with a disability in accordance with 707 KAR 1:300 Section 4 before determining that the child is no longer a child with a disability.

707 KAR 1:300 Section 4 (20)  
34 CFR 300.305 (e)

The ARC releases a child when the ARC determines the child no longer needs special education and related services. Prior to releasing a child, the ARC completes a **Reevaluation** according to **Evaluation** Procedures.

The ARC concludes the child no longer needs special education and related services after considering the following:

1. The current functioning level of the child within the performance range of similar age peers without disabilities.
2. The child has strategies, skills, and behaviors needed to achieve education expectations and to cope with the demands of the general education program and environment.
3. The general education program can provide accommodations to the child through services available to similar age peers in the general education program who are not disabled.
4. The child is no longer identified as educationally disabled (e.g., student who has had surgery to correct vision or hearing problems, students whose misarticulations have been corrected).

To determine the general education environment for the child, the ARC identifies the grade level and school the child would attend if not disabled. After the child is released from special education, the DoSE or principal arranges for the child to return to the location he/she would have been in if not determined disabled and in need of special education and related services.

The ARC decisions are documented on the Conference Summary. The HCPS Representative or designee gives a copy of the Conference Summary to the parent and notifies appropriate school personnel of the decisions.

The HCPS Representative or designee notifies the DoSE through the **Child Tracking System** in **Child Find** and places the record on inactive status.

### **Graduation with a Diploma/Completion of Certificate Program/Aging Out**

“Graduates” means a youth completes the established program of study leading to the receipt of a diploma and leaves the school system. The HCPS 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.

An LEA shall evaluate a child with a disability in accordance with 707 KAR 1:300 Section 4 before determining that the child is no longer a child with a disability. The LEA shall not be required to conduct an evaluation as described in 707 KAR 1:300 Section 4 before termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age of eligibility for a free, appropriate public education.

0707 KAR 1:300 Section 4 (20)  
34 CFR 300.305 (e) (2)

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)

### Graduation

Prior to graduation, the HCPS Representative or designee schedules an ARC to discuss a change in services/placement due to graduation. At this meeting (which may be the annual review meeting) prior to a youth's expected graduation date, the ARC:

1. reviews the youth's progress in the current program;
2. reviews, and revises if appropriate, the IEP and transition plan;
3. checks earned credits in the youth's education record against the requirements established by the State and Local Boards of Education to determine if the youth meets, or is scheduled to complete the requirements for graduation;
4. determines any support or assistance the youth needs for successful participation in the graduation ceremonies (diploma in Braille, wheelchair access, etc.).

The ARC decisions are documented on the Conference Summary. The HCPS

Representative or designee gives a copy of the Conference Summary and other documents to the parent/youth and files a copy in the student's record.

The HCPS Representative or designee notifies the DoSE through the **Child Tracking System** procedures in **Child Find** and places the record on inactive status.

A HCPS staff person is assigned to prepare a summary, in consultation with the student, of the youth's academic achievement and functional performance, including recommendations on how to assist the youth in meeting the youth's postsecondary goals. HCPS staff provides the student with a copy of the summary before graduation.

### Certificate Program

A youth with a disability who meets the criteria for certificate program, whose individualized secondary program is established by the ARC, earns a certificate of attainment according to the Kentucky Program of Studies. The youth is provided with the opportunity to participate in graduation ceremonies with peers who are not disabled.

Prior to releasing the youth, the HCPS Representative or designee assigns a HCPS staff person to prepare a summary, in consultation with the student, of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. HCPS staff provides the student with a copy of the summary before graduation.

At the annual review meeting prior to the completion of the youth's program, the ARC:

1. reviews the youth's progress in the current program;
2. reviews, and revises if appropriate, the IEP and transition plan;
3. determines any support or assistance the youth needs for successful participation in the commencement ceremonies;
4. documents the decisions of the committee in the Conference Summary.

If the youth has received a certificate of completion/attainment, but has not aged out, the youth may return to special education and related services until the youth ages out.

The youth participates in graduation exercises according to school graduation procedures and receives a certificate of completion/attainment with no distinction regarding disability made in the ceremony.

The ARC decisions are documented on the Conference Summary. The HCPS Representative or designee gives a copy of the Conference Summary to the parent and files a copy in the student's record.

The HCPS Representative or designee notifies the DoSE through the **Child Tracking System** procedures in **Child Find** and places the record on inactive status.

### Exceeding the Age of Eligibility for FAPE

"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 eligibility for FAPE.

Prior to the annual review date, the HCPS Representative or designee schedules an ARC for the purpose of discussing a change in services/placement due to aging out and assigns a HCPS staff person to prepare a summary, in consultation with the student, of the youth's academic achievement and functional performance, including recommendations on how to assist the youth in meeting the youth's postsecondary goals. HCPS staff provides the youth with a copy of the summary before graduation.

At the annual review meeting prior to the youth's 21st birthday, the ARC:

1. reviews the youth's progress in the current program;
2. reviews, and revises if appropriate, the IEP and transition plan;
3. determines the last date of services based on the youth's 21st birthday; and
4. provides the youth with the opportunity to participate in graduation ceremonies.

The ARC decisions are documented on the Conference Summary. The HCPS Representative or designee gives a copy of the Conference Summary to the parent/youth and files a copy in the student's record.

The HCPS Representative or designee notifies the DoSE through the **Child Tracking System** procedures in **Child Find** and places the record on inactive status.

### **Withdrawal Prior to Program Completion**

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

When a youth age 16 or older who has been receiving special education and related services withdraws from school, the counselor notifies the special education teacher of the youth's withdrawal action. District or school staff follow the district procedures for any youth who withdraws from school.

The HCPS Representative or designee notifies the DoSE through the **Child Tracking System** in procedures for **Child Find** and places the student record on inactive status.

Annually, the DoSE or the Principal sends a letter to the parent, or the youth if emancipated, of the availability of services.

### Shortened School Day

The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age who is enrolled and in regular attendance in a state-supported program for exceptional children.

KRS 159.030 (1)(f)

A shortened school day may be a change in setting for a student with a disability. The ARC may apply the exemption from compulsory attendance to a child with a disability whose condition warrants less than a full day of attendance. The ARC follows HCPS procedures to review and revise, as appropriate, the IEP. If the ARC determines the

child needs a shortened school day, the HCPS Representative or designee notifies the DoSE. The DoSE requests the HCPS Board of Education (in closed session) to grant the exemption from full day attendance for the child. If the Board approves the exemption, the DoSE notifies the Division of Exceptional Child Services of the local board decision using the DECS-provided form.

## **TRANSFER STUDENTS**

Transfer means the student leaves a 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.

### **Students Who Transfer to HCPS from a Kentucky Public School District**

If a child with a disability transfers between school districts within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child shall be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the LEA adopts the previous IEP or develops, adopts and implements a new IEP.

707 KAR 1:320 Section 6 (1)  
34 CFR 300.323 (e)

HCPS makes special education and related services available for children with disabilities who transfer into HCPS within the same academic year, and who were receiving special education and related services according to an IEP at the time of transfer.

HCPS provides special education and related services in consultation with the parents and consistent with the timelines specified in the IEP if:

1. a child transfers from another school district in the Commonwealth; and
2. upon enrollment, the parent or youth presents special education records from the prior district which document:
  - a. the child has a disability;
  - b. the child has been determined to meet Kentucky eligibility guidelines for special education and related services;
  - c. the district from which the child transferred provided special education and related services up to the time the child transferred; and
  - d. due process requirements have been met.

The ARC of the school in which the child enrolls assumes responsibility for educational services. The ARC adopts or revises the previous IEP or develops and implements a new IEP.

### **Students Who Transfer to HCPS from Outside of Kentucky**

If a child with a disability transfers between school districts within the same academic year from outside the state, and had an IEP in effect in another state, the child shall be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the LEA conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child meets the eligibility criteria as defined in 707 KAR 1:280.

HCPS makes special education and related services available for children with disabilities who transfer into HCPS from outside the state within the same academic year and who were receiving special education and related services according to an IEP at the time of transfer. HCPS provides special education and related services in consultation with the parents and consistent with the timelines specified in the IEP if:

1. a child transfers from another public school district outside of the Commonwealth; and
2. upon enrollment, the parent or youth presents special education records from the prior district which document:
  - a. the child has a disability;
  - b. the child has been determined to meet Kentucky eligibility guidelines for special education and related services;
  - c. the district from which the child transferred provided special education and related services up to the time the child transferred; and
  - d. due process requirements have been met.

The ARC of the school in which the child enrolls assumes responsibility for educational services. The ARC conducts an evaluation, if necessary, and revise/develops, and implements the new IEP if the child meets eligibility guidelines according to procedures for ELIGIBILITY.

### **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)  
34 CFR 300.304 (c) (5)

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

- (a) if the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and 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 KAR 1:320 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 school 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 the completion of the evaluation extends beyond the 60 school day timeline, the ARC will meet to discuss the progress of the evaluation and establish a new timeline.

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

### **Transmittal of Educational Records for Transfer Students**



To facilitate the transition of a child who transfers, the receiving LEA shall take reasonable steps to obtain the child's records, including the IEP, supporting documents, and any other records, including discipline records, relating to the provision of special education and related services. The previous LEA shall take reasonable steps to promptly respond to such requests from the receiving LEA.

707 KAR 1:320 Section 6 (3)  
34 CFR 300.323 (g)

If another district contacts HCPS to verify a previously enrolled child was receiving services at the time of the transfer, the intake person answers questions and records the request for information.

The intake person receiving the request for information records the following information:

1. date of request;
2. name of the child (first, middle, last, and nickname);
3. date of birth;
4. name and address of person making request and the agency they are representing;
5. information requested; and
6. preferred method of information transfer (e.g., FAX, telephone, mail, etc.).

Upon receipt of notification that a child has transferred to another school district, HCPS personnel send copies of the education record to the receiving school district or educational agency according to district procedures.

Copies (not originals), as requested by the district/agency, may include the following special education records:

1. Consent to Evaluate/Reevaluate
2. Consent for Specially Designed Instruction
3. Current Conference Summary
4. Current IEP, student performance information, and data summaries
5. Current Assessment Report and Eligibility Determination
6. Initial Assessment Report and Eligibility Determination
7. Consent to bill Medicaid, if appropriate, and
8. Other data as requested.

The HCPS Representative or designee notifies the DoSE through the **Child Tracking System** in procedures for **Child Find** and places the record on inactive status.

### **Placement when the Child's Current IEP Status Cannot be Verified**

If the child's current IEP status cannot be verified, the HCPS representative or designee enrolls the child and places the child in an age-appropriate general education program according to HCPS Board Policy.

## IMPLEMENTATION AND SERVICE DELIVERY

### IMPLEMENTATION OF THE IEP

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

707 KAR 1:320 Section 1 (3)  
34 CFR 300.323 (a)

An LEA shall ensure the IEP:

- (a) is in effect before specially designed instruction and related services are provided to a child with a disability; and
- (b) is implemented as soon as possible following an ARC meeting.

707 KAR 1:320 Section 1 (4)  
34 CFR 300.323 (c)

HCPS ensures that an IEP is in place at the beginning of each school year for every student with a disability who is aged three (3) to twenty-one (21) years old and is eligible for special education and related services. This includes students who reside within the boundaries of HCPS and students who are placed by HCPS in a private school.

A LEA (or state agency responsible for developing the child's IEP) shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.

707 KAR 1:320 Section 1 (5)  
34 CFR 300.103 (c)

The IEP is implemented as soon as possible following an ARC meeting. Delays in implementation of the IEP may include:

6. meetings held during summer break;
7. developing an IEP for a child who is not yet three (3) years of age;
8. circumstances that require a short delay (e.g., working out transportation arrangements);
9. decisions by the ARC to begin implementation with the next grading period, or other natural break in school instruction; or
10. awaiting parent consent for the initial provision of services.

HCPS provides services directly through staff assignment or creation of resources, or indirectly by contracting with another public or private agency.

### Implementers/Case Manager

"Implementer" means person(s) including general education teachers, special education teachers, related service personnel, and others assigned responsibility for implementing services as documented on the IEP.

The implementer, who is qualified to deliver instruction to encompass the IEP components of SDI, SAS, Support for School Personnel, and Related Services, is responsible for instructional planning as well as collecting, monitoring, and maintaining student progress information. Each person responsible for IEP implementation:

1. designs and initiates instructional plans for accomplishing IEP goals, benchmarks or objectives;
2. collects student IEP progress data;
3. maintains records of progress for each student;
4. collects data according to the methods of measurement specified in the IEP for the goals, benchmarks/objectives being measured for instructional decision making;
5. reports progress toward the goals as documented on the IEP; and
6. provides feedback to students and parents.

A "case manager" means a teacher or service provider who is assigned the responsibility of managing student due process records and is assigned by the Principal or DoSE. The case manager is not required but may be an implementer of the IEP. The role of the case manager includes:

1. updating the Child Tracking System (according to the **CHILD FIND** procedures);
2. collecting, filing and reporting information to ARC members and parents as required by policies and procedures;
3. notifying ARC members of the students' progress and/or lack of progress toward goals, and benchmarks and objectives (i.e., reporting progress to parents);
4. consulting and communicating with all IEP implementers about how service will be provided;
5. attending ARC meetings for students who are on their caseload;
6. reporting progress data to the ARC no less than annually; and
7. performing other roles as assigned by the ARC.

The HCPS Representative and/or case manager or designee ensures that each implementer is notified of their responsibilities for service delivery and documentation of student progress toward goals and objectives/benchmarks. See also **IEP Accessibility** in procedures for **IEP**.

When IEP implementers review the student progress data and the data indicates the student is falling behind or exceeding a goal(s), the implementer communicates with the case manager, who notifies the HCPS Representative or designee to schedule an ARC meeting to review the progress of the student. The ARC follows **Review and Revision of IEP** in procedures for **Individual Education Programs**.

Parents may agree to assist in implementation but cannot be the sole implementer responsible for the delivery of services and the collection of progress data.

### Paraprofessionals as Implementers

"Teacher's aide" means an adult school employee who works under the direction of the professional administrative and teaching staff in performing, within the limitations of his or her training and competency, certain instructional and noninstructional functions in the school program including, but not limited to, clerical duties, tutoring individual pupils, leading pupils in recreational activities, conducting pupils from place to place, assisting with classroom instruction as directed by the teacher, aiding the school librarian, and preparing and organizing instructional materials and equipment.

KRS 161.010

The various boards of education of the Commonwealth of Kentucky, and the principals of the public schools, may use teacher's aides in supervisory capacities, such as playground supervision, hallway supervision, lunchroom and cafeteria supervision, and other like duties, including, but not limited to, recreational activities and athletic events, relating to the supervision and control of the conduct of the pupils; and while so engaged, such teacher's aides shall have the same authority and responsibility as is granted to and imposed by law upon teachers in the performance of the same or similar duties.

KRS 161.180

Paraprofessionals may assist in implementation of a student's IEP under the supervision and direction of the assigned implementer. The implementer may direct the paraprofessional to:

1. carry out instructional plans for accomplishing IEP annual goals, benchmarks or objectives;
2. collect and maintain records of progress data; and
3. use methods of measurement that are specified in the IEP for the annual goals, benchmarks/objectives being measured.

### **Implementation for Service Delivery**

The HCPS Representative or designee assigns a case manager for every child with an IEP. The case manager tracks the delivery of all services and reports to the HCPS Representative or designee in a timely manner if any service is not being delivered in accordance with the IEP according to procedures for **Child Tracking System in Child Find**.

When the HCPS Representative or designee and DoSE are unable to arrange for delivery of an identified service, the DoSE contacts KDE for assistance, including obtaining training and support in the identified area of need. The DoSE maintains records (correspondence, newspaper advertisements, etc.) of efforts made to obtain needed services.

### **Supervision of IEP Implementation**

The Principal ensures that HCPS staff is responsible for the supervision and implementation of the IEP by reviewing instructional plans, reviewing tracking system reports according to **Child Tracking System** procedures in **Child Find**, and by conducting record reviews.

If the Principal finds that an IEP is not being implemented, the Principal consults with the DoSE and then develops an appropriate plan of action.

### **IEP ACCOUNTABILITY**

The LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks in the IEP.

707 KAR 1:320 Section 9 (1)

"Good faith effort" means the state of mind denoting honesty of purpose, freedom from intention to defraud, and being faithful to one's duty or obligation.

Black's Law Dictionary 6<sup>th</sup> Ed.

HCPS staff make good-faith efforts to assist the child in making progress toward the annual goals and benchmarks and/or objectives, including those related to transition services.

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

707 KAR 1:320 Section 9 (3)

The parents have the right to request an ARC meeting at any time to review or revise their child's IEP. If the parents disagree with the decision(s) of the ARC, the HCPS Representative or designee informs the parents of the use of mediation, complaint, and due process procedures according to the appropriate procedures in **Procedural Safeguards**.

## **GRADUATION AND PROGRAM COMPLETION**

HCPS issues the same high school diploma to each student with a disability who meets the required graduation criteria and standards as that issued to student without disabilities who meet the same criteria. The ARC plans an appropriate course of study leading to graduation and a diploma for a student no later than age fourteen (14) according to **Post-School Transition Services** in procedures for **IEP**.

The HCPS Board of Education grants a student with a disability a diploma or a certificate of attainment as part of the graduating class, with no distinction made in the ceremonies. Each student with a disability who completes the secondary program has the opportunity to participate in graduation ceremonies with peers who are not disabled.

### **Graduation with a Diploma**

Each student with a disability in HCPS has an opportunity to complete high school in the same manner and following the course of study available to students who are not disabled. HCPS grants a high school diploma to each student with a disability who meets the required graduation criteria and standards as established by the State Board for Elementary and Secondary Education.

### **Determining Certificate of Attainment**

A student with a disability who meets the criteria for participation in alternate assessment is issued a certificate of attainment upon completing a program designed by the ARC.

A student is eligible for an alternate assessment and a certificate of attainment if the ARC determines that all of the following criteria are met:

1. the student has a current Individual Education Program;
2. the student's demonstrated cognitive ability and adaptive behavior itself prevents completion of the regular course of study even with program accommodations;

3. the student's current adaptive behavior requires extensive direct instruction in multiple settings to accomplish the application and transfer of skills necessary in school, work, home, and community environments;
4. the student's inability to complete the course of study may not be the result of excessive or extended absences; or it may not be primarily the result of visual or auditory disabilities, specific learning disabilities, emotional-behavioral disabilities, or social/cultural/economic differences;
5. the student is unable to apply or use academic skills at a minimal competency level in natural settings (i.e., home, community, or work site) when instructed solely or primarily through school-based instruction;
6. the student is unable to acquire, maintain, or generalize skills, and demonstrate performance without intensive, frequent, and individualized community-based instruction; and
7. the student is unable to complete a regular diploma program even with extended schooling and program accommodations.

The ARC documents the decisions on the Participation Guidelines for the Alternate Assessment System (see **Implementation and Service Delivery Resources**).

Each year during the Annual Review meeting, the ARC reviews the alternate assessment format decision. The ARC may recommend changing assessment formats (alternate assessment or general assessment) based on the meeting the above criteria.

See **Implementation and Service Delivery Resources**, Questions and Answers on Certificate of Attainment and Standard Diploma, DECS, November 2007.

## **CASE LOADS AND CLASS SIZES**

Children who are determined to be eligible for special education and related services by the ARC are served in general education classes, resource classes, or special classes based upon the implementation of the IEP.

### **Class Size/Case Load for Special Class**

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

707 KAR 1:280 Section 1 (7)

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

- (a) emotional-behavior disability is eight (8);
- (b) functional mental disability is ten (10);
- (c) hearing impairment is six (6);
- (d) mild mental disability for primary is fifteen (15);
- (e) multiple disabilities is ten (10);
- (f) orthopedic impairment is sixteen (16);
- (g) other health impairment is sixteen (16);
- (h) specific learning disability for primary is ten (10) and for secondary is fifteen (15); and
- (i) visual impairment is ten (10).

707 KAR 1:350 Section 2 (1)

**Special Education Waiver Process**  
**For SY 2015-2016**  
**Based on Kentucky Administrative Regulations**  
Effective August 3, 2015

The Kentucky Department of Education, Division of Learning Services promulgated Kentucky Administrative Regulations (KARs) for special education programs that became effective August 1, 2001. The new KARs change the program teacher assignment, shortened school day/week, caseload, class size, and grade range requirements contained in the previous regulations for special education programs. Below is a brief summary of the impact of these changes under the new KARs. Also included are tables establishing requirements for both the caseload and class size based on special education teacher as submitted to the Education and Professional Standards Board (EPSB). The tables include information on waivers this office will approve. Grade Range waivers are approved on a case-by-case basis.

**Program Teacher Assignment:** 16 KAR 4:020, Qualifications for Assignments. The previous regulation limited special education teachers to providing specially designed instruction to no more than three different disability categories. With the repeal of this regulation, there is no longer a specified limit on the numbers of different disability categories a teacher may serve. However, teachers remain limited based on their teaching certification and class assignment. Waivers must be requested when there are special education assignments for a teacher who is not certified in the area of their assignment. While these waiver requests will be submitted to the KDE/DLS, approval of the assignment will come from the EPSB.

**Shortened School Day:** The process for approving a shortened school day and/or week has changed very little. Students with disabilities are expected to attend school for the entire school day. However, when circumstances warrant, the Admissions and Release Committee (ARC) may determine it is in the student's best interest to shorten his or her school day and/or week. Districts must meet the same requirements for granting a shortened school as in previous years, including having a medical statement signed by a physician; documented determination by the student's ARC that a shortened school day is needed; an IEP that prescribes the length of the shortened day; and approval by the district's Board of Education that maintains the student's confidentiality. When the school day is shortened and all these pieces are in place, the district must submit notice to the KDE/DLS on forms provided. Information shall include the student's name, disability, school, school district, teacher, length of day, building principal, and confirmation that there is a signed medical statement, an ARC determination of need, that a shortened day is described in the student's IEP, and that the local Board of Education has approved a shortened day for the specified student. Note: this is **not a request** for approval from KDE/DLS, but rather **it is notice** to this office that the district has shortened the school day of a child with a disability pursuant to criteria described above.

**Grade Range (per period and overall):** KARs no longer specifies **age ranges** either per period or for overall caseload. As a result, age range issues are now viewed as **Grade Range** issues and are based on teacher certification, location of the class, and the level of the non-disabled students on the campus. Students assigned to a teacher roster for either management of their folders or for instruction must be appropriate for the teacher's certification and assignment. Students must also meet the same grade and age level requirements as general education students at the school where the teacher teaches and the student is enrolled. This means special education students must be located on the same campus as their same age/grade peers. When special education students are not housed on an age or grade appropriate campus, then the district must submit a request for a **Grade Range Waiver**. In cases where a middle school special education unit is housed at an elementary school campus, then there must be a grade range waiver request to address the teacher's assignment.





For example, a teacher assigned to an elementary school should only have elementary school age students in grade appropriate classes, middle school teachers should only have middle school age students and high school teachers should only have high school age students. Teachers on mixed campuses such as K-8 or 7-12, should be assigned students appropriate for these grades meeting the same grade and age level requirements as the general education teachers at these schools.

**Case Load (overall numbers):**

**Special Class** – Case load assignments for special class are the same as the Class size per period described below for the special class. If the case load exceeds the maximum number of students for 30 days, then the district must submit a request for a **Case Load Waiver**.

**Resource Class** - Case load is the number of student records for whom a teacher can be assigned. This does not mean that this teacher will not provide specially designed instruction to other special education students. However, the Resource Teacher is only responsible for maintaining the student folder and due process documentation on these students. The total number of students the Resource Class teacher provides services to is limited by the per period Class size. If the caseload exceeds the maximum number of students for 30 days, then the district must submit a request for a **Case Load Waiver**.

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

**Class size (per period):**

**Special Class** – Class sizes for the special class are **the same** as the Case Load of a special class and are based on the disability category of the majority of students served by a teacher. Class size for an SLD class is also impacted based on whether it is a Primary (K-8) or Secondary (7-12) campus. While regulations do not allow for a waiver to the Class size per period, Case Load Waivers granted to a special class will increase the class size per period as well.

**Resource Class** – Class sizes for the Resource Class are **different** than the Case Load but like the Special Class are also based on the disability category of the majority of students served by a teacher.

**Collaboration** – Class size for Collaboration Classes means the number of children with disabilities assigned to a teacher of exceptional children per period, block, or the specified length of the time set by the individual school district.



# SY 2015-2016 Case Load Requirements

<b>Teacher Assignment, Code and Class Plan</b>	<b>Maximum Case Load</b>	<b>Waiver without Teacher Assistant</b>	<b>Waiver With Full Time Teacher Assistant</b>
<b><u>Visual Disability</u></b> 6010 Special Class 6012 Resource Plan 6012 (Itinerant)	10 10 10	11 11 11	12 12 12
<b><u>Hearing Impaired</u></b> 6020 Special Class 6022 Resource Plan 6022 (Itinerant)	6 8 8	7 9 9	8 10 10
<b><u>Mental Disability</u></b> <b><u>Mild Level:</u></b> 6030 Special Class Primary – 8 Secondary 7-12 6032 Resource Plan Primary – 8 Secondary 7-12	15 15 15 20	16 16 16 21	17 17 17 22
<b><u>Mental Disability</u></b> <b><u>Functional Level</u></b> 6120 Special Class 6122 Resource Plan	10 10	11 11	12 12
<b><u>Emotional-Behavioral Disability</u></b> 6040 Special Class 6042 Resource Plan	8 15	9 16	10 17
<b><u>Learning Disability</u></b> 6060 Special Class Primary – 8 Secondary 7-12 6062 Resource Plan Primary – 8 Secondary 7-12	10 15 15 20	11 16 16 21	12 17 17 22
<b><u>Collaboration Model</u></b> 6263 Collaboration Model Primary – 8 Secondary 7-12	15 20	No Waivers No Waivers	No Waivers No Waivers
<b><u>Physical Disability and Other Health Impaired</u></b> 6070 Special Class 6072 Resource Plan	16 20	17 21	18 22
<b><u>Speech/Language</u></b> 6102 Resource Plan 6103 One SLPA 6104 Two SLPA	65 97 130	No Waivers No Waivers No Waivers	No Waivers No Waivers No Waivers
<b><u>Multiple Disability</u></b> <b>(FMD)</b> 6133 Special Class 6134 Resource Plan <b>(MMD)</b> 6135 Special Class 6136 Resource Plan	10 10 10 10	11 11 11 11	12 12 12 12

*For Middle School Programs, Teachers with ONLY 7th and 8th Grade Students on the Roster Use the **Secondary Case Load**. However, Whenever There is a 6th (or Lower) Grade Student on the Roster, the **Primary Case Load** is Used.*



# SY 2015-2016

## Class Size per Period Requirements

<b>Teacher Assignment, Code and Class Plan</b>	<b>Maximum Class Size</b>	<b>Waiver without Teacher Assistant</b>	<b>Waiver with a Teacher Assistant During Excess Class Size</b>
<b><u>Visual Disability</u></b> 6010 Special Class 6012 Resource Plan 6012 (Itinerant)	N/A 8 8	N/A 9 9	N/A 10 10
<b><u>Hearing Impaired</u></b> 6020 Special Class 6022 Resource Plan 6022 (Itinerant)	N/A 8 8	N/A 9 9	N/A 10 10
<b><u>Mental Disability</u></b> <b><u>Mild Level:</u></b> 6030 Special Class Primary – 8 Secondary 7-12 6032 Resource Plan Primary – 8 Secondary 7-12	N/A N/A 10 10	N/A N/A 11 11	N/A N/A 12 12
<b><u>Mental Disability</u></b> <b><u>Functional Level</u></b> 6120 Special Class 6122 Resource Plan	N/A 8	N/A 9	N/A 10
<b><u>Emotional-Behavioral Disability</u></b> 6040 Special Class 6042 Resource Plan	N/A 8	N/A 9	N/A 10
<b><u>Learning Disability</u></b> 6060 Special Class Primary – 8 Secondary 7-12 6062 Resource Plan Primary – 8 Secondary 7-12	N/A N/A 10 10	N/A N/A 11 11	N/A N/A 12 12
<b><u>Collaboration Model</u></b> 6263 Collaboration Model Primary – 8 Secondary 7-12	N/A N/A	N/A N/A	N/A N/A
<b><u>Physical Disability and Other Health Impaired</u></b> 6070 Special Class 6072 Resource Plan	N/A 10	N/A 11	N/A 12
<b><u>Speech/Language</u></b> 6102 Resource Plan 6103 One SLPA 6104 Two SLPA			
<b><u>Multiple Disability (FMD)</u></b> 6133 Special Class 6134 Resource Plan <b><u>(MMD)</u></b> 6135 Special Class 6136 Resource Plan	N/A 8 N/A 8	N/A 9 N/A 9	N/A 10 N/A 10

*For Middle School Programs, Teachers with ONLY 7<sup>th</sup> and 8<sup>th</sup> Grade Students in the Class Use the Secondary Class Size. However, Whenever There is a 6<sup>th</sup> (or Lower) Grade Student in the Class, the Primary Class Size is Used.*



## Case Load for Resource Class

Caseload for resource teachers shall refer to the maximum number of student records a teacher may be assigned. A LEA shall make those assignments based on the following:

- (1) emotional-behavioral disability is fifteen (15);
- (2) functional mental disability is ten (10);
- (3) hearing impairment is eight (8);
- (4) mild mental disability for primary is fifteen (15) and for secondary is twenty (20);
- (5) multiple disabilities is ten (10);
- (6) orthopedic impairment is twenty (20);
- (7) other health impairment is twenty (20);
- (8) specific learning disability for primary is fifteen (15) and for secondary is twenty (20);
- (9) visual impairment is ten (10); and
- (10) Speech language pathologist caseload limits as contained in KRS 334A.190.

707 KAR 1:350 Section 3 (1-10)

## Children with Autism, Deaf-blindness and Developmental Delay

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

707 KAR 1:350 Section 2 (3)

## Caseload for Speech and Language Pathologists

The caseload limitations for speech-language pathologists in the public schools shall not exceed sixty-five (65) pupils. The total caseload of speech-language pathologists who supervise assistants may be increased by no more than one-half of the number set forth for each speech-language pathology assistant working under the supervision.

## Caseload for a Collaborative Model

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

707 KAR 1:350 Section 2 (4)

## Resource Class Size

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

707 KAR 1:280 Section 1 (10)

A LEA shall provide special education according to class size for resource classes for each child with a disability as follows:

- (a) emotional-behavior disability is eight (8);
- (b) functional mental disability is eight (8);
- (c) hearing impairment is eight (8);
- (d) mild mental disability is ten (10);
- (e) multiple disabilities is eight (8);
- (f) orthopedic impairment is ten (10);
- (g) other health impairment is ten (10);
- (h) specific learning disability is ten (10); and
- (i) visual impairment is eight (8).

707 KAR 1:350 Section 2 (2)

## Waiver of Caseload or Class Size Limits

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

707 KAR 1:350 Section 2 (5)

If a caseload or a class size exceeds the maximum specified in the regulation for thirty calendar (30) days, the principal notifies the DoSE, who requests an exemption or waiver from the State Board of Education as allowed by KRS 157.360 and KRS 156.160(2) according to the forms and directions provided by KDE.

Copies of correspondence and copies of the approval or rejection by the DECS are maintained in the office of the DoSE. The DoSE sends a copy of DECS' response to the waiver request to the principal.

## CONFIDENTIALITY

Refer to General Board of Education Policy (Chapter 9, Section 09.14) for other provisions regarding confidentiality of records for all students.

## ACCESS RIGHTS

### Education Records

"Education record" means:

data and information directly relating to a student that is collected or maintained by educational institutions or by a person acting for an institution including academic records and portfolios; achievement tests; aptitude scores; teacher and counselor evaluations; health and personal data; behavioral and psychological evaluations; and directory data recorded in any medium including handwriting, magnetic tapes, film, video, microfiche, computer-generated and stored data, or data otherwise maintained and used by the educational institution or a person acting for an institution.

KRS 160.700(3)

"Education Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

Education record means those records, files, documents, and other materials that are:

- (a) Directly related to a student; and
- (b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR 99.3

"Education Records" do not include:

- (a) Records of instructional supervisory, and administrative personnel and education personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
- (b) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are maintained separately from educational records; maintained solely for law enforcement purposes; and disclosed only to law enforcement officials of the same jurisdiction;
- (c) In the case of persons who are employed by an educational agency or institution but who are not in attendance at that agency or institution, records made and maintained in the normal course of business which relate exclusively to that person in the person's capacity as an employee and are not available for use for any other purpose; and



(d) Records on a student who is eighteen (18) years of age or older, which are made, used or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional for treatment of the student, and are not available to anyone other than persons providing the treatment, except a physician or other appropriate professional of the student's choice.

34 CFR 99.3  
KRS 160.700 (3) (a-d)

### Private Notes Kept by School Personnel

Notes or documents in the sole possession of the creator are exempt from parent or eligible student access if:

1. it is a private note created solely by the individual possessing it;
2. it is a personal memory aid; and
3. the contents are accessible to or revealed to no one except the possessor's temporary substitute.

If another person is knowledgeable of the contents of these notes, then they are subject to review by the parents, eligible student, or subpoena. Oral communication from such notes or documents makes the documents an educational record and accessible to parents for review, even if these are maintained in the sole possession of the creator.

### **Inspection and Review of Educational Records**

An LEA shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the LEA. The LEA shall comply with a request without unnecessary delay and before any meeting regarding an IEP, dispute resolution meeting, or due process hearing, and in no case more than forty-five (45) days after the request has been made.

707 KAR 1:360 Section 1 (1)  
34 CFR 300.613 (a)

An educational agency or institution shall give full access rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

34 CFR 99.4

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

707 KAR 1:360 Section 1 (3)  
34 CFR 300.613 (c)

"Eligible student" means a student, or a former student, who has reached the age of eighteen (18) or is pursuing an education beyond high school and therefore the permission or consent required of, and the rights accorded to the parents of the student shall therefore be required of, and accorded to, the student.

KRS 160.700 (4)

If the parent, representative, or eligible student makes a request to review and inspect educational records, the retrieval and access of the records are provided:

1. without unnecessary delay;
2. within 45 calendar days from the time the request is received;
3. before any ARC meeting or due process hearing takes place; and
4. at a time mutually acceptable to the parent and the school personnel.

## Explanation and Interpretation of Records

The right to inspect and review education records under this administrative regulation shall include:

- (a) the right to a response from the LEA to reasonable requests for explanations and interpretations of the records;
- (b) the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (c) the right to have a representative of the parent inspect and review the records.

707 KAR 1:360 Section 1 (2)

34 CFR 300.613 (b)

KRS 160.715 (1)

If the parent requests an explanation of the records, HCPS staff makes sure that the appropriate staff member (e.g., DoSE, principal, school psychologist, counselor, or special education teacher) is present to explain and interpret the records and answer any questions the parent may have.

If the primary language or mode of communication used by the parent of the child is not English, within five (5) days of a completed parental request to review the educational records of a child, the principal notifies the DoSE of the need for translation of the records. The DoSE obtains the translation prior to any ARC meeting. Every attempt is made to obtain the translation within thirty-five (35) calendar days after the request is made. This translation is consistent with the mode of communication used by the parent and therefore may include a recorded or oral reading format.

### Test Protocols

When HCPS evaluates a child according to **Evaluation** Procedures, the ARC gives the parent a copy of the written assessment report. The written report provides an explanation of information collected through the assessment process, including an explanation of the information collected on the test protocol. The qualified examiner, upon request, may show and discuss the information on the protocol with the parent using sample test items rather than actual items.

Copyrighted test protocol and raw data generated by evaluators are educational records when the protocol contains personally identifiable information. HCPS makes sure test protocols are maintained in secure areas in the offices of evaluators, and are not released to others during the evaluation process.

...If a school were to maintain a copy of a student test answer sheet (an "educational record") the parent would have a right under Part B and FERPA to request an explanation and interpretation of the record. The explanation and interpretation by the school could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the responses in some other adequate manner that would inform the parent. ...Federal copyright law protects against the distribution of copies of a copyrighted document, such as a test protocol. Since IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, Federal copyright law generally should not be implicated under these regulations.

IDEA Interpretation for 34 CFR 300.562 (IDEA 1997)

In order to abide by copyright laws and protect test validity and security, HCPS does not provide copies of test protocol to parents.

## **Representative of Parent to Inspect and Review Records**

If the parent authorizes an individual to serve as the parent's representative to inspect and review the records, the parent completes the Consent for the Release of Information form provided by HCPS. When the release of information form is appropriately signed by the legal representative of the child, the HCPS grants the authorized representative access to the educational records of the child. If copies of records are provided, a fee may be charged according to **Fees for Copying Records** in procedures for **Confidentiality**).

## **Record of Disclosure**

A LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1 (except access by parents and authorized employees of the LEA), including:

- (1) the name of the party;
- (2) the date access was given; and
- (3) the purpose for which the party is authorized to use the records.

707 KAR 1:360 Section 2  
34 CFR 300.614  
34 CFR 99.32

HCPS maintains a Record of Disclosure form in each due process folder as long as the records are maintained. All individuals, except parents, eligible students, and employees of the HCPS with a legitimate educational interest in the records, sign the record of disclosure form prior to inspecting and reviewing the record.

## **RECORDS ON MORE THAN ONE CHILD**

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of only that specific information.

707 KAR 1:360 Section 3  
34 CFR 300.615  
34 CFR 99.12

The HCPS provides information from records containing data on more than one child in such a way as to preserve the confidentiality of the other students.

If a parent requests to review and inspect educational records that have information about more than one child (e.g., attendance rosters, child tracking systems, grade books, etc.), then the person responsible for the maintenance of those records makes certain that any personally identifiable information regarding other children is not disclosed.

The HCPS ensures that personally identifiable information about any child is not maintained in the educational record of another child.

## **TYPES AND LOCATION OF INFORMATION**

A LEA shall provide parents, on request, a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the LEA.

707 KAR 1:360 Section 4  
34 CFR 300.616

On request, the HCPS staff provides a list of the types and location of educational records for children with disabilities collected, maintained and used by the HCPS. The list specifies the type of information, (e.g., due process folder, speech folder, psychological/evaluator records), and the location (specific school or office).

## **FEES FOR COPYING RECORDS**

A LEA may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 if the fee does not effectively prevent the parent from exercising his right to inspect and review the records. The LEA shall not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

707 KAR 1:360 Section 5  
34 CFR 300.617  
34 CFR 99.11  
KRS 160.715 (2)

The parent receives a copy of each evaluation and reevaluation report, each eligibility report, each IEP and each Conference Summary following the ARC meeting when each specific document is initially discussed or developed. Initial copies are provided to the parent free of charge.

HCPS may charge a fee to the parent for additional copies of records, as long as the fee does not effectively prevent the parent from inspecting or reviewing the records. A fee is not charged for record search or retrieval. See HCPS Board Policy for fee schedule.

## **RECORD AMENDMENT**

### **Request to Amend Information in Education Records**

A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 is inaccurate, misleading, or violates the privacy or other rights of the child may request the LEA to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the LEA shall respond within ten (10) school days.

707 KAR 1:360 Section 6 (1)  
34 CFR 300.618 (a)  
34 CFR 99.20 (a)  
KRS 160.730 (1)

Record amendment refers to changing, deleting, or destroying information in the educational records of a child or youth.

Upon receipt of the written parental request (which includes the date and the reason for the request) the HCPS Representative, the DoSE, and other HCPS personnel as needed, meet with the parent to discuss the parent's request, and review the record.

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

34 CFR 300.618 (b)  
34 CFR 99.20 (b)

If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.619.

34 CFR 300.618 (c)  
34 CFR 99.20 (c)  
702 KAR 1:40 Section 1

If the HCPS decides to amend the information, the DoSE or designee informs the parent in writing of the decision and amends the record.

If the HCPS decides not to amend the information in accordance with the parent's request, the DoSE or designee provides a written explanation to the parent and advises the parent of the right to a record amendment hearing.

### **Request for Record Amendment Hearing**

If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1:140 shall apply.

707 KAR 1:360 Section 6 (2)

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

34 CFR 300.619  
34 CFR 99.21 (a)

The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

34 CFR 99.22 (c)

Within five (5) business days of receipt of the parent's written request for a hearing, the Superintendent appoints a certified person who is a disinterested party to conduct the hearing.

"Disinterested party" is a person who has no direct responsibility or authority for supervision of the child or personnel involved with the child and have no identified conflict of interest.

### **Timelines for Record Amendment Hearing**

Upon request, the school district shall arrange for a hearing to be held within thirty (30) days after the request for hearing and notify the student's parents(s) or guardian, reasonably in advance, of the date, place, and time of the hearing. The hearing shall be conducted by a hearing officer who is a disinterested party and is a certified official of the district appointed by the Superintendent.

702 KAR 1:140 Section 2 (2)  
34 CFR 99.22 (a-b)

The HCPS conducts a hearing to challenge information in educational records on the following timetable:

1. The hearing is held within thirty (30) calendar days of the date of receipt of the parent's written request for a hearing.

2. The person conducting the hearing provides the parent written notice of the meeting, including the date, time, and place, at least seven (7) calendar days in advance of the hearing.
3. The person conducting the hearing issues the decision in writing to the parent and appropriate HCPS staff within ten (10) business days following the date of the hearing.

### **Conduct of Record Amendment Hearing**

The hearing shall be private. Persons other than the student, parent(s), witnesses, and counsel shall not be admitted into the hearing. The hearing officer shall hear evidence from the school staff and the student's parent(s) or guardian to determine any points of disagreement regarding the records. The student's parent(s) or guardian shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's educational records. The parent(s) or guardian may be assisted by one (1) or more individuals, including an attorney.

702 KAR 1:140 Section 2 (3, 4, 5)  
34 CFR 99.22 (d)

The hearing provides the parent or eligible student a full and fair opportunity to present relevant evidence. This includes the opportunity to:

1. present witnesses, question school employees, and provide oral testimony or written evidence as to the inaccurate or misleading information in the educational records; and
2. be represented by one or more persons at their own expense, including an attorney.

The individual conducting the hearing allows the DoSE and/or HCPS Representative to present evidence and testimony, and to question witnesses.

The decision of whether or not to amend an educational record is based solely on the evidence presented at the hearing and the applicable law.

### **Result of Record Amendment Hearing**

The hearing officer shall make a determination after hearing the evidence in writing within ten (10) working days following the close of the hearing. The hearing officer shall make a determination based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reason for the decision. The parties to the hearing shall be provided a copy of the hearing officer's decision.

702 KAR 1:140 Section 2 (6)  
34 CFR 99.22 (e-f)

If, as a result of the hearing, the hearing officer decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the school district shall amend the information accordingly and inform the student's parent(s) or guardian of the amendment in writing.

702 KAR 1:140 Section 3 (2)  
34 CFR 300.620 (a)  
34 CFR 99.21 (b)

The DoSE amends the information in accordance with the decision of the hearing officer, and informs the parent, in writing, that the amendment of records has been completed. The HCPS maintains the documents related to the hearing separate from the educational records of the child or youth and destroys the records in accordance

with HCPS Board Policy.

If the hearing officer decides after the hearing the challenged information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district shall inform the student's parent(s) or guardian of the right to place a statement in the record commenting on the contested information or stating why he disagrees with the decision of the hearing officer. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the record, it shall also disclose the statement.

702 KAR 1:140 Section 3 (1)  
34 CFR 300.620 (b-c)

The DoSE assures that any statement received from the parent is placed in the child's education record, and identified in a manner that will ensure appropriate disclosure whenever the record is disclosed.

## **DISCLOSURE OF EDUCATIONAL RECORDS**

### **List of Persons Who May Have Access to Educational Records**

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

707 KAR 1:360 Section 8 (4)  
34 CFR 300.623 (d)

The DoSE develops a list of the names and positions of district level staff who may have a legitimate educational interest and access to personally identifiable information in educational records. The DoSE posts the list in the Central Office, and disseminates the list to each school building.

Each school develops a list of the names and positions of all building level staff who may have a legitimate educational interest and access to personally identifiable information in educational records. The principal posts the list of the school and district level staff with the special education files.

### **Written Parental Consent**

Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 17, parental consent shall be obtained before personally identifiable student information is:

- (a) disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Chapter 1; or
- (b) used for any purpose other than meeting a requirement under 707 KAR Chapter 1.

707 KAR 1:360 Section 7 (1)  
34 CFR 300.622 (a)  
KRS 160.720 (1)

The written consent must:

- (a) Specify the records that may be disclosed;
- (b) State the purpose of the disclosure; and
- (c) Identify the party or class of parties to whom disclosure may be made.

34 CFR 99.30 (a)

## 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, or the consent of an eligible child under FERPA, 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.

## Disclosure without Consent

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

707 KAR 1:360 Section 7 (2)

34 CFR 300.622 (a)

34 CFR 99.31

KRS 160.720 (2)

HCPS may disclose personally identifiable information from an educational record without parental consent if the disclosure is:

1. to the parent of a student who is not an eligible student, or to the eligible student;
2. to school officials who have been determined by HCPS to have legitimate educational interest including:
  - a. members of the ARC;
  - b. personnel responsible for the IEP;
  - c. student teachers; and
  - d. paraprofessionals;
3. official personnel of another public school, school system, or institution of postsecondary education where the student seeks or intends to enroll;
4. to authorized representatives of:
  - a. the Comptroller General of the United States;
  - b. the Secretary; and
  - c. State and local educational authorities;
5. in connection with financial aid for which a student has applied or for which a student has received, provided that personally identifiable information from the records of the student is disclosed only as may be necessary for such purposes as:
  - a. determining the eligibility of the student for financial aid;
  - b. determining the amount of the financial aid;
  - c. determining the condition which will be imposed regarding the financial aid; or
  - d. enforcing the terms or conditions of the financial aid;



6. to state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 1974;
7. for the Confidentiality Chapter of these procedures, participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act (IDEA).
8. to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administering student aid programs; or improving instruction;
9. to accrediting organizations in order to carry out their accrediting functions;
10. to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;
11. to comply with a judicial order or lawfully issued subpoena, provided HCPS has made a reasonable effort to notify the parent or the student of the order or subpoena prior to compliance, unless the disclosure is in compliance with a Federal grand jury subpoena or any other subpoena issued for a law enforcement purpose;
12. to appropriate parties in a health or safety emergency; and
13. information HCPS has designated as "directory" information.

### **Emergency that May Warrant Disclosure Without Consent**

An education agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

34 CFR 99.36 (a)

If an emergency arises in which it is necessary to protect the health and safety of a child or other individuals, HCPS discloses personally identifiable information from the educational records of the child to the appropriate parties connected with the emergency.

In determining whether or not an emergency exists that would warrant the disclosure of educational records, the building principal or designee considers the following factors:

1. the seriousness of the threat to the health or safety of the child or youth or other individuals;
2. whether the information is needed in order to take action during the emergency;
3. whether the individuals to whom the information is disclosed are in a position to act during the emergency; and
4. the extent to which time is of the essence in dealing with the emergency.

Upon determination by the building principal or designee that the situation is an emergency and warrants the disclosure of educational records, the building principal or designee obtains the records of the child and makes them available to the appropriate parties immediately.

## Release of Education Records to another Public School District

The notice of rights to parents of enrolled students and eligible students includes a statement that HCPS releases the educational records, without parent consent, of a child who seeks to or enrolls in another public school district. The request for records may be made by:

1. the parent;
2. the eligible student; or
3. personnel of the receiving school.

Upon receipt of a request for records from the receiving district, the principal or designee documents the request on the Record of Disclosure, and provides copies (not originals) of the following special education records to the requesting public school district as per request:

1. Consent to Evaluate/Reevaluate
2. Consent for Specially Designed Instruction
3. Current Conference summary
4. Current IEP, student performance information, and data summaries
5. Current Assessment Report and Eligibility determination
6. Initial Assessment Report and Eligibility determination
7. Consent to bill Medicaid, if appropriate, and
8. Other data as requested.

The complete special education record of the child is placed on inactive status according to **Child Tracking** in procedures for **Child Find**.

If a parent or eligible student makes a request to the principal of the school for a copy of the educational records that have been transferred, HCPS provides a copy of all transferred records to the parent free of charge.

If a child transfers to another school within the HCPS, the entire special education record is transferred to that school.

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

34 CFR 300.622 (3)

If HCPS receives a request from a private school or agency, the principal or designee requests that the parent sign the Consent for Release of Information before any educational records are sent. If copies of the record are provided, a fee may be charged according to **Fees for Copying Records** in procedures for **Confidentiality**.

## Records Regarding Migratory Children with Disabilities

An LEA shall transfer health and education records on migratory children with disabilities who move to other states in accordance with the No Child Left Behind Act, 20 U.S.C. 6398.

707 KAR 1:290 Section 10  
34 CFR 300.213

The KPSD shall cooperate with the efforts of the United States Department of Education under the No Child Left Behind Act to transfer health and education records on migratory children with disabilities who move to other states.

If copies of the record are provided, a fee may be charged according to **Fees for Copying Records** in procedures for **Confidentiality**.

### **Re-disclosure of Personally Identifiable Information**

An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to another party without the prior consent of the parent or eligible student. An education agency shall inform a party to whom disclosure is made of the requirements of this section.

34 CFR 99.33 (a) (1) and (d)

In disclosing personally identifiable information from educational records other than to parents of students under eighteen (18), to the eligible student, or when releasing directory information, HCPS informs the party to whom the disclosure was made that use and disclosure of the information is subject to the requirements of the Family Education Rights and Privacy Act (FERPA).

Any information received by the HCPS is used only for the purposes for which the disclosure was made.

Prior to re-disclosing any information in an education record that was obtained from another source; the HCPS Representative or designee contacts the parent or eligible student in order to obtain the parent or eligible student's written consent for re-disclosure. The parent or eligible student completes the Consent for Release of Information form prior to the re-disclosure of any information.

### **Parent Refusal to Release Information**

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

707 KAR 1:360 Section 7 (3)

If a parent refuses to give consent for the disclosure of educational records needed to provide a free appropriate public education, and the HCPS disagrees with the parent's refusal for disclosure, the HCPS may request a due process hearing according to procedures in **Procedural Safeguards**.

### **CONFIDENTIALITY SAFEGUARDS**

An LEA shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

707 KAR 1:360 Section 8 (1)  
34 CFR 300.623 (a)

## Records Security

HCPS ensures that the confidentiality of personally identifiable information is protected and unauthorized access is prevented at the following stages:

1. collection (e.g., during handling of referrals);
2. storage (e.g., secure files, protection of computer files);
3. disclosure (e.g., during access to records); and
4. destruction (e.g., during the process of records destruction).

## Persons Responsible for Ensuring Confidentiality

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

707 KAR 1:360 Section 8 (2)  
34 CFR 300.623 (b)

The Director of Pupil Personnel is responsible for ensuring the confidentiality of personally identifiable information for all students. The DoSE is responsible for the general supervision of all educational records related to children and youth with disabilities. Building principals have responsibility for all records maintained at the building level even though teachers may have custody of the records.

## Confidentiality Training

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

707 KAR 1:360 Section 8 (3)  
34 CFR 300.623 (c)

HCPS provides training for all HCPS personnel who collect, use, or maintain personally identifiable information. Within thirty (30) calendar days prior to the start of school, all HCPS administrative staff are trained regarding HCPS policies and procedures for confidentiality. Within thirty (30) calendar days of the start of school, all other HCPS personnel who have access to educational records are trained by the building principal or designee regarding HCPS policies and procedures regarding confidentiality. When new staff are employed during the school year, the individual's immediate supervisor provides training in confidentiality issues for the new employee. Copies of documentation for confidentiality training are maintained by the DPP at the Central Office.

HCPS provides training for volunteers and any others who may have access to personally identifiable information such as mentors, foster grandparents, student teachers, etc.

## DESTRUCTION OF INFORMATION

An LEA shall inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information shall be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.

707 KAR 1:360 Section 9  
34 CFR 300.624 (a-b)

The Kentucky Records Retention Schedule governs the destruction of all school records and specifies that special education records must be maintained for a specific number of years after the last activity involving special education services for the specific child. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained indefinitely.

During the Annual Review meeting for a student who is attending their last year of high school (see **Review and Revision of the IEP** in procedures for **Implementation And Service Delivery**) the HCPS Representative or designee explains the HCPS procedures for destruction of records. The HCPS Representative or designee asks the parent or eligible student to sign consent for destruction of records and files the form in the record of the student.

When HCPS determines that educational records are no longer needed to provide services for a child with a disability, the DoSE notifies the parent(s) to inform them of the date the records will be destroyed by:

- a. mailing a notice to the parents at their last known address, or
- b. publishing a notice in the newspaper regarding the record destruction and the date the records will be destroyed.

### Parent Request for Destruction of Records

If a parent requests the destruction of educational records, the Principal or designee destroys the records in accordance with the requirements of the Kentucky Records Retention Schedule. If a parent requests destruction, the HCPS does not destroy any records:

1. that have not been retained for a minimum period of time since the last activity (see Kentucky Records Retention Schedule);
2. if there is an outstanding request to inspect or review the records;
3. if there is an unresolved finding of noncompliance in a program or fiscal audit;  
or
4. if the records are needed for planning and implementing an individual educational program to demonstrate compliance with applicable state and federal requirements.

If the parent of a child or youth with disabilities requests the destruction of records, the HCPS Representative or designee informs the parent or eligible student that the records may be needed to establish social security benefits or other purposes.

## RIGHTS OF THE ELIGIBLE STUDENT

The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law.

707 KAR 1:360 Section 10  
34 CFR 300.625 (b)

Prior to the youth's eighteenth (18<sup>th</sup>) birthday, the HCPS Representative provides notice to the parent and the student that the rights regarding review, inspection, and disclosure of records will transfer to the youth at the age of eighteen (18). The notice is documented on the IEP.

The HCPS does not disclose educational records of a youth over the age of eighteen (18) to the parent without:

1. the youth's written consent;
2. a court order; or
3. proof that the youth is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954.

## CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

### PRIVATE SCHOOL CHILDREN WITH DISABILITIES

Private school children with disabilities means children with disabilities enrolled by their parents in private schools and not children with disabilities enrolled in private schools upon referral by a LEA.

707 KAR 1:280 Section 1 (47)  
34 CFR 300.130

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

707 KAR 1:280 Section 1 (31)

### 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, through Child Find activities, HCPS locates a child who is parentally placed in a private school in the HCPS district, HCPS staff cannot 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**).

## Child Tracking System

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 Services Plan.

### Evaluation for Services

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

(a) shall not use the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing;

(b) shall not be required to consider the child as eligible for services under this administrative regulation; and

(c) shall document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place or employment visits, and the results of these efforts.

707 KAR 1:370 Section 3  
34 CFR 300.140

HCPS evaluates all children with suspected disabilities who attend any school within the boundaries of HCPS, according to procedures for **Procedural Safeguards and Evaluation**.

### Eligibility for Services

The ARC follows HCPS established procedures for **Procedural Safeguards, Evaluation, Eligibility, and IEP**.

### FAPE Availability

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

707 KAR 1:370 Section 1 (1)  
34 CFR 300.148 (a)  
KRS 157.280 (3)

If the ARC determines that HCPS has an appropriate educational program for the child,

and the parent chooses to place the child in a program or facility in another public school district or private organization, the parent assumes responsibility for payment for the costs incurred in educating the child.

HCPS does not pay for the education of a child with a disability in any location other than the one selected by the ARC if the child has a free appropriate public education available from the public school district and the parents chose to unilaterally place the child in the private school or facility.

Disagreements between a parent and HCPS regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to due process procedures.

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

707 KAR 1:370 Section 6 (2)  
34 CFR 300.138 (a) (2)  
34 CFR 300.137 (a)

A parentally placed private school child with a disability has no individual right to receive FAPE.

### Services Plan

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

707 KAR 1:370 Section 6 (3)  
34 CFR 300.138 (b)

If, after the ARC determines the child meets eligibility for a disability, the parents make clear their intention to enroll (or continue enrollment of) their child at a private school, the ARC does not develop an IEP for the child. The ARC may determine the child may receive services through a Services Plan that describes the special education or related services HCPS will provide according to the procedures for **Determination of Proportionate Amount of Spending on Children Placed In Private Schools.**

If a determination is made that the child needs special education and related services, the general rule in 34 CFR Section 300.535 (b) is that an IEP must be developed for the child in accordance with 34 CFR Section 300.340-300.350, with one important exception. If the parents make clear their intention to enroll their child at a private school and that they are not interested in a public program or placement for their child, the public agency need not develop an IEP for the child. If the parents choose not to accept the public agency's offer to make FAPE available to their child, the public agency still must include the child in its eligible population of parentally-placed private school children with disabilities, whose needs must be considered and addressed in accordance with 34 CFR Section 300.450-300.462 of the Part B regulations.

OSEP Memo, Q&A #8, May 2000

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

707 KAR 1:370 Section 4 (1)



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

707 KAR 1:370 Section 4 (2)  
34 CFR 300.138 (b) (2)

HCPS conducts ARC meetings for every child who is enrolled in a private school and has been evaluated by HCPS. If the child meets eligibility for a disability, and the parent of the eligible child makes clear their intention to enroll (or continue enrollment of) their child at a private school, the ARC does not develop an IEP. The HCPS Representative or designee provides a full and complete explanation of the services the child would receive if enrolled in HCPS. The ARC may determine the child may receive services through a Services Plan.

If the ARC determines the private school child with a disability will receive services from HCPS, the ARC develops a Services Plan to specify the services the child will receive. The Services Plan reflects only the services offered to the private school child with a disability. The DoSE includes the child in the child tracking system as a parentally-placed private school child with a disability.

HCPS provides special education and related services as described in the Services Plan for children with disabilities enrolled in private schools. HCPS does not provide classes in the general curriculum for the private school student at the public school. For example, if parents request that in addition to receiving speech at the public school, their child also be allowed to take physics, HCPS is not obligated, and does not allow the child to take physics.

### Implementation of the Services Plan

The services plan shall, to the extent appropriate:

- (a) meet the requirements of an IEP under 707 KAR 1:320 with respect to the services provided; and
- (b) be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs.

707 KAR 1:370 Section 6 (4)  
34 CFR 300.138 (b) (2)

If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must

- (1) initiate and conduct meetings to develop, review, and revise a services plan for the child; and
- (2) ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

34 CFR 300.137 (c)

Services delivered through a service plan shall be provided by:

- (a) employees of the LEA; or
- (b) through a contact with the LEA.

707 KAR 1:370 Section 6 (5)  
34 CFR 300.138 (c) (1)

Special education and related services provided through a service plan shall be secular, neutral, and

nonideological.

707 KAR 1:370 Section 6 (6)  
34 CFR 300.138 (c) (2)

The ARC develops, reviews, and revises the Services Plan on an annual basis, or as necessary, according to procedures for **Procedural Safeguards, IEP, and Service Delivery**.

The HCPS Representative or designee ensures a representative of the private school is included in the ARC to develop or revise a child's Services Plan. If a representative of the private agency cannot attend the ARC meeting, HCPS uses other methods to assure the representative's participation, including individual or conference telephone calls. ARC meetings are scheduled and conducted according to procedures in **Procedural Safeguards**.

### **Reevaluation for Continued Eligibility**

HCPS conducts three-year reevaluations of children with disabilities who attend private schools. If the child is receiving services from HCPS through a Services Plan, the HCPS Representative or designee sends a Notice to the parent according to **Notice of ARC Meeting** in procedures for **Procedural Safeguards**.

If the child does not receive services from HCPS, but has been previously identified as a child with a disability, HCPS sends a notice to the parent to schedule an ARC for the purpose of reviewing current information and planning an evaluation.

### **Location of Services**

A service to a private school child with a disability may be provided at a site determined by the LEA. If necessary for the child to benefit from or participate in the services provided under a services plan, the private school child with a disability shall be provided transportation:

- (a) from the child's school or the child's home to a site other than the private school; and
- (b) from the service site to the private school, or to the child's home, depending on the timing of the services.

707 KAR 1:370 Section 7 (1)  
34 CFR 300.139 (b)

The DoSE, in consultation with private school representatives, makes the decision regarding the location of services to implement the Services Plan. If the child attends a private school outside the boundaries of HCPS, HCPS may provide the services within the HCPS boundaries, or through contract with the public school district in which the private school is located. The public school district in which the private school is located is not required to contract to provide the services.

A LEA shall not be required to provide transportation from the child's home to the private school.

707 KAR 1:370 Section 7 (2)  
34 CFR 300.139 (b) (1) (B) (ii)

HCPS shall work in consultation with representatives of private school children to ensure that services are provided at sites that will not require significant transportation costs to the parent. The HCPS is not responsible to provide transportation from the child's home to the private school.

## Formal Complaint

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

707 KAR 1:370 Section 8 (1)  
34 CFR 300.140 (a, b, c)

Parents of students who are voluntarily enrolled in private schools and receiving services under a Services Plan cannot seek mediation or a due process hearing regarding the school's alleged failure to meet the requirement of providing services to the child. The parents may request a meeting to review and revise the child's Services Plan, or file a complaint with the Kentucky Department of Education, according to **State Complaint Procedures** in procedures for **Procedural Safeguards**.

## Due Process Procedures

In the event of disagreements between the parents and HCPS, the HCPS representative or designee provides to the parent an explanation of the rights of the parent regarding private school placement.

Parents may only seek a due process hearing to challenge HCPS' Child Find activities or failure to comply with the evaluation requirements.

## CONSULTATION WITH REPRESENTATIVES OF PRIVATE SCHOOLS

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

- (a) the child find process, including how children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;
- (b) the determination of the proportionate share of federal funds, including how calculated;
- (c) how the consultation process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- (d) how, where, and by whom special education and related services will be provided including:
  1. a discussion of the types of services, including direct services and alternate service delivery methods;
  2. how special education and related services will be apportioned if funds are not sufficient to serve all parentally placed private school students with disabilities; and
  3. how and when those decisions will be made; and
- (e) how the LEA will provide a written explanation to the private schools of the reasons why the LEA chose not to provide services directly or through a contract, if the LEA disagrees with the views of the private school representatives.

707 KAR 1:370 Section 5 (1)  
34 CFR 300.134 (a-d)

Prior to the beginning of each school year, the DoSE shall consult, in a timely and meaningful fashion, with private school representatives and parents or representatives of parents of parentally-placed private school children with disabilities during the design

and development of special education and related services regarding the following:

- (a) The child find process, including how children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;
- (b) The determination of the proportionate share of federal funds, including how calculated;
- (c) How the consultation process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- (d) How, where, and by whom special education and related services will be provided including a discussion of:
  - i. The types of services, including direct services and alternate service delivery methods;
  - ii. How special education and related services will be apportioned if funds are not sufficient to serve all parentally placed private school students with disabilities; and
  - iii. How and when those decisions will be made; and
- (e) How the HCPS will provide a written explanation to the private school officials of the reasons why it chose not to provide services directly or through a contract, if the HCPS disagrees with the views of the private school representatives.

The DoSE obtains a list of students who reside in the district and are attending private schools from the Director of Pupil Personnel (DPP). This list is maintained by the DPP from information provided in accordance with KRS 159.160, which requires non-public schools to report to the local superintendent information needed to comply with the laws regarding compulsory school attendance.

The DoSE sends a letter to selected representatives of private schools where residents of HCPS may attend school. The letter offers the private school representatives an opportunity for input into HCPS' plans for conducting Child Find activities for private school students; funding available for services; and the number of HCPS residents with disabilities who attend private school, and the location and needs of the students. The DoSE maintains written records of the input received from the private school representatives.

HCPS personnel make the final determine of the types and levels of services to be provided.

### **Determination of Proportionate Amount of Spending**

To meet the requirements of 707 KAR 1:370 Section 4, an LEA shall spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 CFR 300.133. This amount shall be determined after the LEA has completed its child find activities and submitted a child count figure to KDE. This child count shall be conducted on December 1 of each year.

707 KAR 1:370 Section 4 (3)  
34 CFR 300.133 (c)

The DoSE ensures that the child tracking system includes information on all children with disabilities, including children with disabilities who attend private schools but are not currently receiving services. The information is used to determine the proportionate amount of funding, as well as the implementation of reevaluation timelines.

The proportionate amount is a ratio based on the total number of children who are eligible for services, not children actually served. The amount is derived from dividing the total number of parentally-placed private and home school students eligible for special education services by the total number of children with disabilities who are eligible for special education services. This provides a percent of the IDEA-B grant to spend on the parentally placed private and home school students.

Once the proportionate share of funds is calculated, the funds that are expended do not have to be Federal funds. If State categorical aid funds or local funds are used, this meets the requirement of the proportionate share of funds. Section 189 of the Kentucky Constitution prohibits the appropriation, use, or aid of any non-public (private) school through state taxes levied for educational purposes (e.g., teachers paid from the district general fund cannot provide services at the private school site).

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

707 KAR 1:370 Section 5 (2)  
34 CFR 300.135 (a) & (b)

Once the consultation meeting is over, the district reviews the needs of all parentally placed private school children; considers the views of the parents and private school administrators; considers the number of students, type(s) of services, location of services, and the service provider to determine how to apportion the funds for "equitable participation." HCPS requests a written affirmation from the private school representatives that they participated in the meeting. If HCPS does not receive a written affirmation, HCPS copies the written documentation of the process and sends to KDE, Office of Exceptional Children.

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 (4)  
34 CFR 300.131 (d)

The DoSE does not include the cost for Child Find activities, evaluation, and reevaluation in the calculation of proportionate share of expenditures.

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

707 KAR 1:370 Section 7 (3)  
34 CFR 300.139 (b) (2)

## RESTRICTIONS ON SERVING NON-PUBLIC SCHOOL STUDENTS

### Use of Funds

A LEA shall not use funds under Part B of IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA shall use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for:

- (a) the needs of a private school; or
- (b) the general needs of the students enrolled in the private school.

707 KAR 1:370 Section 9 (1)  
34 CFR 300.141 (a-b)

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

707 KAR 1:370 Section 9 (7)  
34 CFR 300.144 (e)

The DoSE monitors the use of Part B funds for children voluntarily placed by their parents in private schools. The DoSE ensures that IDEA funds are not used to finance the existing level of instruction in the private school, even if such service addresses the need of a child with a disability; and that Services Plans do not address any needs of a child that may be met by existing programs in the private school. The DoSE ensures that funds are not used to address the general needs of students enrolled in the private school, but used only for those needs that are unique to the child with a disability.

### Personnel

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

707 KAR 1:370 Section 6 (1)  
34 CFR 300.138 (a) (1)

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

707 KAR 1:370 Section 9 (2)  
34 CFR 300.142 (a)

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

707 KAR 1:370 Section 9 (3)  
34 CFR 300.142 (b)

HCPS ensures that personnel implementing the services plan meet the same standards as are required by HCPS; however, HCPS does not require private school teachers providing services to meet the specifications under the No Child Left Behind Act for highly qualified.

The DoSE monitors the amount of Part B funds utilized for salaries or contracted service delivery purposes by specific individual and job assignment. The DoSE assigns

HCPS staff to provide services in private schools only to the extent determined by Service Plans developed by the ARC.

If, after consultation with the Superintendent, the DoSE determines that Part B funds will be used to contract with private school personnel to provide services under a Service Plan, the contract includes the specification that the services are provided outside his/her regular hours of duty at the Private School, and under the supervision and control of HCPS. The DoSE ensures the provision of the supervision and evaluation of the services delivered.

### **Property, Equipment and Supplies**

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

707 KAR 1:370 Section 9 (4)  
34 CFR 300.144 (a-b)

The DoSE keeps an inventory of any property, equipment and supply items purchased through the use of Part B funds that are utilized to provide benefit to private school children with a disability through Service Plans. The inventory includes items utilized for the purposes of Child Find (evaluation tests/kits, equipment such as audiometers, etc.), and service delivery (language programs, reading kits, picture cards, etc.).

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

707 KAR 1:370 Section 9 (5)  
34 CFR 300.144 (c)

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

707 KAR 1:370 Section 9 (6)  
34 CFR 300.144 (d)

When the assigned location of the equipment or supplies is at a private school, the DoSE ensures that the item(s) are secure, not permanently installed, and available for use with children with disabilities only by HCPS assigned or contracted staff. The items are removed from the private school location by HCPS staff when no longer needed for Part B purposes (Child Find activities or service delivery as specified by a Service Plan). Federal funds are not used for repair, remodeling, or construction at a private school site. The DoSE instructs HCPS staff to report any suspected unauthorized use of the items. The DoSE may remove the items from the private school site.

### **PARENTAL PLACEMENT OF A CHILD WHO PREVIOUSLY RECEIVED SPECIAL EDUCATION AND RELATED SERVICES**

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

the LEA did not make a referral to the private school. A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to a LEA.

707 KAR 1:370 Section 1 (2)

34 CFR 300.148 (c)

The cost of the financial reimbursement described in 707 KAR 1:370 Section 1 (2) may be reduced or denied if:

- (a) at the most recent ARC meeting prior to the removal by the parents of their child with a disability to the private school, the parents did not inform the LEA that they were rejecting the proposed LEA placement, including stating their concerns and their intent to enroll the child in a private school at public expense;
- (b) the parents did not give written notice to the LEA of the information described in (a) above at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child;
- (c) prior to the parent's removal of the child, the LEA informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (d) there is a judicial finding that the actions taken by the parents were unreasonable.

707 KAR 1:370 Section 1 (3)

34 CFR 300.148 (d)

The cost of financial reimbursement shall not be reduced or denied for the failure to provide the notice in 707 KAR 1:370 Section 1 (3) if:

- (a) the parent is illiterate;
- (b) compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
- (c) the school prevented the parent from providing the notice; or
- (d) the parent had not received notice from the HCPS of his obligation to provide this notice.

707 KAR 1:370 Section 1 (4)

34 CFR 300.148 (e)

HCPS includes notice of the above responsibilities to the parent in the written Notice of Parental Procedural Safeguards (parent rights) document provided according to procedures for **Procedural Safeguards**.