

McLean County Public Schools

Special Education Procedures

August 16, 2018

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Chapter I
Definitions
707 KAR 1:002

Section 1: Definitions

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

(2) “**Adverse effect**” means that the progress of the student is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.

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

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

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of Assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing Assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with Assistive technology devices, like those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child’s family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

(5) “**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.

(6) “**Business day**” means Monday through Friday except for federal and state holidays, unless a holiday is specifically included in the designation of business day as in 707 KAR 1:370, Section 1.

(7) “**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.

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

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

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

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

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

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

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

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

(11) “**Collaboration**” means, for purposes of determining class size in 707 KAR 1:350, Section 2, a teacher of exceptional children works with children with disabilities in the regular classroom to provide specially designed instruction and related services.

(12) “**Complaint**” means a written allegation that a local education agency (LEA) has violated a requirement of the Individuals with Disabilities Education Act (IDEA) or an implementing administrative regulation, and the facts on which the statement is based.

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

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

(15) “**Consent**” means:

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

(16) “**Controlled Substance**” means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(17) “**Core Academic Subjects**” means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.

(18) “**Corrective Action Plan (CAP)**” means a written improvement plan describing activities

and timelines, with persons responsible for implementation, developed to correct identified areas of non-compliance, including directives from the KDE, specifying actions to be taken to fulfill a legal obligation.

(19) “**Course of Study**” means a multiyear description of coursework from the student’s current school year to the anticipated exit year designed to achieve the student’s desired post-school goals.

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

(21) “**Deaf-Blindness**” means concomitant hearing and visual impairments that have an adverse effect on the child’s education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities.

(22) “**Developmental Delay (DD)**” means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one (1) or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help-adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child’s chronological age and current level of performance. The discrepancy shall be documented by:

- (a) Scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures;
- (b) Scores of one and one-half (1½) standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or
- (c) The professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

(23) “**Education Records**” means records as defined in the Family Educational Rights and

Privacy Act of 1974, 20 U.S.C. Section 1232(g).

(24) “**Emotional-Behavioral Disability (EBD)**” means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one (1) or more of the following, when compared to the child’s peer and cultural reference groups, across settings, over a long period of time and to a marked degree:

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

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

(25) “**Enforcement**” means KDE takes steps to ensure federal and state special education requirements are implemented.

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

(27) “**Free Appropriate Public Education (FAPE)**” means special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of KDE included in 707 KAR Chapter 1 and the Academic Standards, 704 KAR 3:303, as appropriate;
- (c) Include preschool, elementary school, or secondary school education in the state; and
- (d) Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

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

(29) "**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:
 - i) an average pure-tone hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 25dB in the better ear;
 - ii) an average pure-tone hearing loss in the high-frequency range (2000Hz, 4000Hz, and 6000Hz) of at least 45dB in the better ear; or
 - iii) an average pure-tone unilateral hearing loss in the speech range (500Hz, 1000Hz, and 2000Hz) of at least 60dB in the impaired ear;
- (b) Results in difficulty identifying linguistic information through hearing; and
- (c) Has an adverse effect on the child's educational performance.

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

(31) "**Homeless Children**" The term 'homeless children' has the meaning given the term homeless children and youths in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431).

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

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

(34) "**Independent Education Evaluation**" means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

(35) **“Individual Education Program (IEP)”** means a written statement for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

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

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

(38) **“Mental Disability”** means that a child has one (1) of the following:

(a) A Mild Mental Disability (MMD) in which:

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

(b) A Functional Mental Disability (FMD) in which:

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

(39) **“Monitoring”** means gathering and reviewing information to determine if a project or

program meets state and IDEA requirements including the implementation of corrective action plans.

(40) **“Multiple Disabilities (MD)”** means concomitant impairments that have an adverse effect on the child’s educational performance, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. Examples of MD include mental disability-blindness, and mental disability-orthopedic impairment. Multiple disabilities does not mean deaf-blindness, nor does it mean a speech or language impairment in combination with another category of disability.

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

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

(42) **“Orthopedic Impairment (OI)”** means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes:

- (a) An impairment caused by a congenital anomaly such as clubfoot or absence of some member,
- (b) An impairment caused by disease, such as poliomyelitis, or bone tuberculosis, and
- (c) An impairment from other cause, such as cerebral palsy, amputations, and fractures or burns that causes contractures.

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

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

Syndrome; and

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

(44) **"Parent"** means:

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

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

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

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

(46) “**Personally identifiable information**” means information that includes the name of the child, the child’s parents, or other family member, the address of the child, a personal identifier, including the child’s Social Security Number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

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

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

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

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

(51) “**Reasonable efforts to obtain voluntary compliance**” means active and ongoing efforts by the KDE through technical assistance and negotiation to arrive at an acceptable corrective action plan and follow through on an agreed upon corrective action plan.

(52) “**Related Services**” means:

- (a) transportation and such developmental, corrective, and supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes.
- (b) Related services also means interpreting services, school nurse and school

health services, social work services in school, and parent counseling and training.

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

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

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

(e) For post secondary purposes, related services are documented in context with transition planning. Students may be referred to appropriate agencies for eligibility of services to be made available post high school completion.

(53) "**Sanctions**" means actions, such as technical assistance, consultation, or training that are taken by the KDE in response to a LEA's failure to comply with the required standards in state and federal laws and administrative regulations.

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

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

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

(57) **“Special Education”** means specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability, including instruction in the classroom, in the home, in hospitals and institutions, and in other settings, and including physical education. Special education means speech-language pathology services, (if the service is considered special education rather than a related service), travel training, and vocational education.

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

(59) **“Specially Designed Instruction (SDI)”** means adapting as appropriate the content, methodology, or delivery of instruction to address the unique needs of the child with a disability and to ensure access of the child to the general education curriculum included in the Academic Standards, 704 KAR 3:303.

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

(61) **“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.

(62) **“Supplementary Aids and Services (SAS)”** means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable a child with a disability to be educated with non-disabled children to the maximum extent appropriate in accordance with 707 KAR 1:350.

(63) **“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 student’s strengths, preferences and interests; and
- (c) Includes:
 - i) instruction;
 - ii) related services;
 - iii) community experiences;
 - iv) the development of employment and other post-school adult living objectives; and
 - v) when appropriate, acquisition of daily living skills and functional vocational evaluation.

(64) **“Traumatic Brain Injury (TBI)”** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury does not mean brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Traumatic brain injury means open or closed head injuries resulting in impairments in one (1) or more areas, including:

- (a) Cognition;
- (b) Language;
- (c) Memory;
- (d) Attention;
- (e) Reasoning;
- (f) Abstract thinking;
- (g) Judgment;
- (h) Problem-solving;
- (i) Sensory, perceptual, and motor abilities;

- (j) Psychosocial behavior;
- (k) Physical functions;
- (l) Information processing; and
- (m) Speech.

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

(66) **“Visual Impairment (VI)”** means 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 effect on the child’s educational performance; and
- (c) Meets the following:
 - i) the child has visual acuity with prescribed lenses that is 20/70 or worse in the better eye; or
 - ii) the child has visual acuity that is better than 20/70 and the child has one (1) of the following conditions:
 - aa) a medically-diagnosed progressive loss of vision;
 - bb) a visual field of twenty (20) degrees or worse;
 - cc) a medically-diagnosed condition of cortical blindness; or
 - dd) a functional vision loss.

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

(68) **“Weapon”** means dangerous weapon as defined in 18 U.S.C. 930 (g) (2).

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

CHAPTER II
FREE APPROPRIATE PUBLIC EDUCATION
707 KAR 1:290

Section 1: Explanation of FAPE

- (1) The McLean County Public Schools (MCPS) makes a free appropriate public education (FAPE) available to each child with a disability based on unique needs, even though a child has not failed or been retained in a course and is advancing from grade to grade:
 - (a) Whose age is three (3) to twenty-one (21) years;
 - (b) Who resides in a home, facility, residence, or any type of shelter within the District's geographical boundaries; (see "Other State Agencies Responsible for Education" in this Section)
 - (c) Who needs specially designed instruction and related services;
 - (d) Who has been suspended or expelled for more than ten days in a school year;
and
 - (e) Who has not graduated with a regular high school diploma.
- (2) The MCPS is not required to provide FAPE to a student eighteen (18) years old or older, who is placed in an adult correctional facility if, in the educational placement prior to placement in the correctional facility, the student was not identified as a child with a disability and did not have an IEP.
- (3) The MCPS makes FAPE available to students with disabilities as specified and provides the student and parents all of the rights under Part B of IDEA, and Kentucky laws and administrative regulations.

Private Insurance/Medicaid

- (1) The MCPS provides and uses local, state, federal, and other fiscal resources as needed to provide the specially designed instruction and related services needed by children with disabilities. The resources may include interagency agreements and use of third party payments including insurances and Medicaid.
- (2) The MCPS shall obtain written informed parental consent to access public benefits or insurance. The consent form shall comply with Family Educational Rights and Privacy Act (FERPA).
- (3) The MCPS shall notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the MCPS of its responsibility to ensure that all required services are provided at no cost to the parent.

No Cost to Parents

- (1) The MCPS makes sure that any expenses for the identification, evaluation, and educational placement of a child with disabilities, or the provision of specially designed instruction and related services for a child with disabilities are at no cost to parents.
- (2) At no cost to parents also includes at no cost to the student if emancipated (age eighteen or married).
- (3) This requirement does not preclude charging incidental fees, which are normally charged to students without disabilities or their parents as part of the regular education program (e.g., activity fees, field trips, etc.).

Placement Outside School District

- (1) The MCPS is responsible for ensuring that the child who has been placed by the school district in another school district, Kentucky School for the Deaf (KSD), Kentucky School for the Blind (KSB), private school, or facility has the same rights of a child with a disability who is directly served by the MCPS as determined by the ARC.
- (2) The state educational agency shall determine whether such schools and facilities meet standards that apply to state educational agencies and local educational agencies and that students so served have all the rights the students would have if served by such agencies.
- (3) Any mediation, complaint, or due process hearing is filed with regard to the MCPS, not the private school or other facility.
- (4) Disputes between the MCPS 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).
- (5) In the event the Admissions Release Committee (ARC) considers placement of the student in another school district, the MCPS may enter into cooperative agreements with other Kentucky Public School Districts for the provision of services to students with disabilities. The MCPS Representative contacts the Director of Special Education (DoSE) and requests attendance at an ARC meeting for the consideration of placement alternatives.
- (6) If the child of school age is placed in a school outside the district, the MCPS provides transportation to and from the school on a regularly scheduled basis, while the child is enrolled, either individually or in cooperation with other districts on a regional basis.
- (7) The DoSE consults with the Director of Transportation who 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). The MCPS is reimbursed from the state transportation fund according to calculations and

procedures provided by the KDE. (KRS 157.280)

- (8) See Chapter 5, Individual Education Program (IEP), for additional procedures on KSB & KSD.

Other State Agencies Responsible for Education

- (1) State agencies that are responsible for providing educational services to children with disabilities within their care shall provide those services in accordance with 707 KAR Chapter 1.
- (2) If payment for services under 707 KAR Chapter 1 is to be provided by an agency other than MCPS, the MCPS shall ensure the services are provided without delay even if there is a delay in the payment for those services.

Section 2: Residential Placement

- (1) If an ARC determines that appropriate specially designed instruction and related services cannot be provided through existing programs in the MCPS and that a private residential education program is required for FAPE, then the MCPS Representative contacts the DoSE and requests attendance at an ARC meeting for the consideration of placement alternatives.
- (2) The same procedures are followed in making this decision that is detailed in Section 1.
- (3) The MCPS will in this circumstance pay for non-medical care, room and board.
- (4) The cost of the program will also be paid by the MCPS, unless it is possible for the MCPS to provide some or all components of the program directly.
- (5) Arrangements for costs will be determined by the DoSE, in consultation with the Superintendent.

Section 3: Proper Functioning Of Hearing Aids and External Components of Surgically Implanted Medical Devices

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

Section 4: Program Options

- (1) The MCPS shall ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Kentucky Academic Standards, 704 KAR 3:303, that is available to children without disabilities.
- (2) These educational services may include:
 - (a) Art;
 - (b) Music;
 - (c) Industrial arts;
 - (d) Consumer and family science education;
 - (e) Career and technical education; and
 - (f) Other educational services.
- (3) All children, including children with disabilities, must be otherwise eligible for participation and thus meet established criteria for the specific programs, services and curriculum.

Section 5: Nonacademic Services

- (1) The MCPS shall take steps to provide all children with disabilities the nonacademic and extracurricular services and activities, including the provision of supplementary aids and services as determined appropriate and necessary by the child's ARC, that give children with disabilities an equal opportunity for participation in those services and activities.
- (2) These services and activities may include:
 - (a) Counseling services;
 - (b) Athletics;
 - (c) Transportation;
 - (d) Health services;
 - (e) Recreational activities;
 - (f) Special interest groups or clubs sponsored by the MCPS ;
 - (g) Referrals to agencies that provide assistance to individuals with disabilities; and
 - (h) Employment of students, including both employment by the MCPS and assistance in making outside employment available.

Section 6: Physical Education

- (1) Unless the provisions of subsection (2) in this section apply, the MCPS shall make available to every child with a disability:
 - (a) Physical education services, specially designed if prescribed in the child's IEP; or
 - (b) The opportunity to participate in the regular physical education program available to children without disabilities.

- (2) The MCPS 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 MCPS enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

Section 7: Assistive Technology

- (1) The MCPS shall ensure that assistive technology devices or assistive technology services, or both, as defined in Chapter 1 (3) or (4), are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services.
- (2) On a case-by-case basis, the use of school purchased assistive technology devices in a child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.
- (3) The ARC determines the need for the use of the assistive technology in non-school settings and specifies any such need in the IEP.

Section 8: Extended School Year Services

- (1) The MCPS shall ensure Extended School Year (ESY) services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for ESY services shall be made on an individual basis by the ARC and documented on the appropriate MCPS form.
- (2) In making this determination the MCPS shall not:
 - (a) Limit the provision of ESY services to a particular category(s) of disability; or
 - (b) Unilaterally limit the type, amount or duration of services.

Extended School Year Criteria

- (1) The MCPS provides ESY services to children with disabilities, regardless of the nature or severity of the disability, if the ARC determines the services are required in order for the child to receive a free appropriate public education.
- (2) ESY is provided when the recoupment time for a child with a disability exceeds that of similar age peers who:
 - (a) Are not disabled and

- (b) Experience the same lapse in instruction.
- (3) Research and case law has led to the determination that the average, and thus accepted and expected recoupment time for students without disabilities is within a range of six to eight weeks for a break from instruction of a comparable amount of time, e.g., following a two-week break, expected recoupment time would be two weeks (see Armstrong v. Kline, 476 F. Supp. 583 (E.D. Pa. 1979).
- (4) An ESY program extends beyond the regular school year for the purpose of:
 - (a) Maintaining the student's current skill level, which, without continued instruction, would be lost or would require an inordinate amount of time to regain those skills;
 - (b) Maintaining the present level of educational performance, and thus
 - (c) Preventing excessive recoupment time.
- (5) ESY services are not designed to:
 - (a) Teach new skills;
 - (b) Prevent normal amounts of regression; or
 - (c) Allow the student to make additional progress.

Verification of Regression and Excessive Recoupment Time

- (1) In order to document evidence of regression/excessive recoupment, it is critical that reliable measures of student performance be available.
- (2) The ARC makes its determination of the need for ESY services, which is not based on any single criterion, by using the following:
 - (a) Progress monitoring data trends relative to all IEP goals which have been taught, in order to assess length of recoupment time, as follows:
 - i) measurement at the end of instruction, e.g., prior to fall or winter break;
 - ii) measurement at the beginning of instruction after a lapse of instructional time, e.g., return from fall or winter break; and
 - iii) measurement at regular intervals until the performance level is equal to performance when the lapse in instruction time began; or
 - (b) When there have been no breaks from instruction or there is uncertain data which can be analyzed to obtain valid assessment of recoupment, the ARC considers:
 - i) tests and observation data collected over a period of time; and
 - ii) the opinion of professionals, based on a professional individual assessment of student regression and recoupment skills.

ARC Analysis of ESY Criteria

- (1) The ARC considers all progress data upon annual review of the IEP, and at any other time as requested by any member.
- (2) Before making a decision when ESY services may be required, the ARC reviews:
 - (a) The on-going progress data trends;
 - (b) Tests;
 - (c) Observation results; and
 - (d) Professional opinions as presented by the ARC members to make a determination regarding the possible requirement for provision of ESY services.
- (3) If specific services have been provided during the interruption in the educational program, documentation must be considered that indicates regression and excessive recoupment time would have been a pattern for the student had no services been provided.
- (4) The services and the amount of time required for ESY services may vary for each student. In addition, the type and amount of service is specific to the area(s) of service required to prevent excessive recoupment time, and not necessarily the full range or amount of services contained in the most current IEP.
- (5) The ARC determines:
 - (a) Which IEP goals will be addressed for ESY services; only goals for which there are verified concerns regarding lack of recoupment should be addressed in ESY services.
 - (b) The amount of time of service(s) necessary to maintain the present level of educational performance for the identified IEP goal(s), not to teach new or emerging skills-
- (6) If the ARC determines the student does not require ESY services, then the ARC documents the decision and rationale on the appropriate MCPS form.
- (7) If the ARC determines the student requires ESY services, then documents:
 - (a) The services presently in the IEP that are to be provided in an ESY program,
 - (b) The amount of time and location of the service(s), and
 - (c) The rationale for the decision on the appropriate MCPS form.
- (8) A new IEP for ESY services need not be written.
- (9) The MCPS representative, in consultation with the DoSE, makes arrangements for the student to receive ESY services according to the specifications of the ARC decision.

Consideration of Extended School Year Services for 3-year-olds in Transition

- (1) The criteria for eligibility determination of ESY services for 3-year-olds in transition are the same as the criteria for all children with disabilities.

- (2) The ARC makes the determination of whether there is a need for ESY services for children whose birthday occurs within the summer months in order to receive FAPE.
- (3) In the case of a child who has transitioned from First Steps (Kentucky's Early Intervention System) or from other early childhood programs, the ARC reviews the child's current level of skills toward the IEP goals that have been carried over from the Individualized Family Service Plan (IFSP).
- (4) If records of progress are not available, the ARC must utilize the opinions of professionals which are based on individual assessment of student regression and recoupment skills.
- (5) Due to the focus of ESY services being toward current levels of skills on the student's IEP, and not the general development, services are not required to be provided in a summer preschool class. Depending on the needed skills, ESY services may be provided:
 - (a) In the home;
 - (b) In a Childcare center; or
 - (c) Through other arrangements determined by the ARC that focus on maintenance of skills.
- (6) Documentation of ESY services is the same as for all children with disabilities.

Section 9: Prohibition of Mandatory Medication

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

Section 10: Program for Students who Transfer

Transmittal of Records Regarding Transfer and Migratory Students with Disabilities

- (1) To facilitate the transition for transfer and migratory students:
 - (a) The MCPS shall cooperate with the efforts of the United States Department of Education under the No Child Left Behind Act (NCLB) to transfer health and education records on migratory students with disabilities who move to other states.
 - (b) When the student transfers from one LEA to another, the transmission of any of the student's records shall include:
 - i) the student's current individual education program;

- ii) supporting documents relating to the provision of special education and related services for the student; and
 - iii) any statement of current or previous disciplinary action that has been taken against the student.
- (c) The receiving LEA shall take reasonable steps to promptly obtain the student's records from the previous LEA, consistent with FERPA, i.e., pursuant, 34, CFR 99.31 (a)(2); and 300; 324; and
- (d) The previous LEA shall take reasonable steps to promptly respond to such request from the receiving LEA.

Transfer within the State

- (1) If a child with a disability transfers into MCPS within the same school/academic year, and has an Individual Education Program (IEP) that was in effect in the state of Kentucky, the MCPS shall:
- (a) Provide such child with a free appropriate public education, including services comparable to those described in the current IEP;
 - (b) Provide these services in consultation with the parent until such time as the MCPS adopts the current IEP; or
 - (c) Develops or adopts, and implements a new IEP that is consistent with federal and state laws.

Transfer from Outside the State

- (1) If a child with a disability transfers into the MCPS within the same school/academic year, and has an IEP that was in effect in another state, the MCPS shall:
- (a) Provide such child with a free appropriate public education, including services comparable to those described in the current IEP;
 - (b) Provide these services in consultation with the parents until such time as the MCPS conducts an evaluation, if determined to be necessary by the MCPS; and
 - (c) Develops or adopts an IEP, if the child meets Kentucky's eligibility criteria.

Section 11: Part C Transition

- (1) MCPS shall ensure that by the third birthday of a child transitioning from a Part C program, an IEP has been developed and is being implemented for the child consistent with this section.
- (2) If a child's third birthday occurs during the summer, the child's ARC shall determine the date when services under the IEP will begin.

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

Section 1: Child Find Requirements

Child Find Criteria

- (1) The MCPS shall implement a child find system to locate, identify, and evaluate each child:
 - (a) Whose age is three (3) to twenty one (21);
 - (b) Who is residing in a home, facility, or residence within the MCPS geographical boundaries,
 - (c) Who has a disability and attends private schools (which includes home schools), located within MCPS boundaries,
 - (d) Who is highly mobile such as migrant and homeless children as described in 704 KAR 7:090 and the IDEA,
 - (e) In foster care, who are wards of the state or are in state custody,
 - (f) Who are advancing grade to grade resulting from passing a grade but who still may have a disability:
 - (g) Who are either in or out of school; and
 - (h) Who may need special education and related services.

Child Find Activities

- (1) The MCPS has established a child find system with activities to locate, identify, and evaluate each child who may meet the above criteria.
- (2) Annually the DoSE requests information about families residing in the MCPS boundaries who are non-English speaking from the Director of Pupil Personnel (DPP).
- (3) The MCPS also provides notice to the general public on an annual basis and before any major identification, location, or evaluation activity by publishing the notice in newspapers or other media with circulation adequate to notify parents within the MCPS geographical boundaries.
- (4) Specifically, the MCPS does the following:
 - (a) Prior to the beginning of the school year, provides a public notice in the native language or other mode of communication of the various populations in the geographical boundaries of the MCPS district to the extent feasible.
 - (b) This notice may be combined with the Family Educational Rights and Privacy Act (FERPA) public notice.
 - (c) The public notice includes:
 - i) a description of the children whom the MCPS will maintain personally identifiable information;

- ii) the types of information the MCPS wants to obtain;
 - iii) the methods the MCPS intends to use in gathering the information, including the sources from whom/which information is gathered;
 - iv) how the MCPS will use the information it gathers;
 - v) a summary of the MCPS's policies and procedures for storage, disclosure to third parties, retention and destruction of personally identifiable information; and
 - vi) a description of all of the rights of the parents and students regarding this information, including the rights under FERPA.
- (5) For preschool age children with disabilities participating in early intervention programs assisted under Part C who will participate under programs assisted under Part B, the MCPS must ensure a smooth and effective transition from the early intervention program to preschool.
- (6) The MCPS shall participate in transition planning conferences for children with disabilities served by early intervention programs as described in the Green River Area Development District Early Childhood Transition Agreement.
- (7) Prior to the beginning of each school year, the DoSE consults with the representatives of private or parochial schools and agencies providing services to children, ages three (3) to twenty-one (21), for the purpose of:
- (a) Creating public awareness of the MCPS child find procedures;
 - (b) Serving as a referral source to locate all children who may have an educational disability and need specially designed instruction and related services;
 - (c) Informing and gathering input from these community providers regarding the needs of potentially identifiable or identified children with disabilities in their locations; and
 - (d) Identifying transition needs for children with disabilities.
- (8) Prior to the beginning of each school year, the DoSE conducts an awareness activity, including screening, with the general public to notify it of the need to find children with disabilities who need specially designed instruction and related services.
- (9) The DoSE, or designee:
- (a) Receives intake information about potentially identifiable children with disabilities,
 - (b) Reviews the information with the parents, and
 - (c) Refers the children to appropriate agencies or MCPS staff.
- (10) Additionally, the MCPS has community and parent involvement.
- (11) Annually, MCPS staff, in collaboration with the DoSE, provide information for school personnel about:

- (c) Procedures for due process;
- (d) Confidentiality; and
- (e) Referral of students who may have disabilities and need specially designed instruction and related services.

Section 2: Coordinated Early Intervening Services

- (1) An LEA may conduct early intervening services for students from kindergarten through twelfth (12th) grade (with particular emphasis on students in kindergarten through grade three) who need additional academic and behavioral support in order to be successful in the regular education environment prior to referral for special education.
- (2) In order to provide these coordinated early intervening services, an LEA shall not spend more than 15 % of the money received under IDEA Part B.

Section 3: Referral System

- (1) The MCPS shall have a referral system that explains how referrals from district or non-district sources will be accepted and acted upon in a timely manner.
- (2) The referral system shall be conducted in such a manner as to prevent inappropriate over identification or disproportionate representation by race and ethnicity of students in special education by ensuring that each student has been provided appropriate instruction and early intervening services prior to referral.
- (3) The MCPS shall ensure that:
 - (a) Prior to, or as a part of the referral process, the student is provided appropriate, relevant research-based instruction and early intervening services in regular education settings, with the instruction provided by qualified personnel; and
 - (b) Data-based documentation of repeated assessments of achievement or measures of behavior is collected and evaluated at reasonable intervals, reflecting systematic assessment of student progress during instruction, the results of which were provided to the student's parents.
- (4) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services and shall not need parental consent.
- (5) If the student has not made adequate progress after an appropriate period of time during which the conditions in subsection (3) of this section have been implemented, a referral for an evaluation to determine if the student needs special education and related services shall be considered.

- (6) Each MCPS school principal or designee is responsible for receiving referrals from any source for resident students.
- (7) The referrals are in writing, signed, and dated by the individual submitting the referral.
- (8) The building principal or designee is responsible for assisting any individual with knowledge about a student in understanding and completing the referral on the MCPS referral form.
- (9) Upon receipt of a referral, the appropriate MCPS Representative determines the members of an ARC and schedules an ARC meeting in a timely manner to discuss the referral information and determine the need for evaluation according to due process procedures, including providing proper notice to parents using the district form.

Referral Meeting Process

- (1) The ARC meets to:
 - (a) Review the referral information to validate the support for the possibility of a disability requiring specially designed instruction;
 - (b) Determine the need for a full and individual evaluation:
 - i) if none is needed, the MCPS Representative provides notice of refused action to the parents.
 - ii) if needed, the ARC determines the areas for evaluation related to the suspected disability and referral problems and the appropriate types of evaluation personnel.
 - (c) Propose a schedule for the evaluation to be conducted and completed. If needed, this proposed schedule may be adjusted during another ARC meeting.
 - (d) Document the ARC decision on the district form.
- (2) The MCPS Representative, ARC Chairperson, or other ARC member describes the decision making process, which may include the following steps:
 - (a) Review the student performance and referral information;
 - (b) Determine if the student significantly differs from peers;
 - (c) Determine if the interventions implemented were appropriate;
 - (d) Decide whether the information is sufficient and supports that the student may have an educational disability;
 - (e) Specify the suspected disability or disabilities, if any;
 - (f) Identify the areas of assessment for the suspected disability or disabilities; and
 - (g) Obtain parental consent for evaluation before initiating any individual evaluation procedure.
- (3) If parental consent is given, the appropriate MCPS Representative obtains written parental

consent and arranges for the evaluation to be completed.

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

Section 4: Evaluation and Reevaluation Procedures

- (1) The MCPS shall ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of the services.

- (2) Tests and other evaluation materials used to assess a child shall be:

- (a) Selected and administered so as not to be discriminatory on a racial or cultural basis;
- (b) Provided and administered in the child's native language or other mode of communication, most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally unless it is clearly not feasible to do so; and
- (c) Used for purposes for which assessments or measures are valid and reliable.

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

- (4) A variety of assessment tools and strategies shall be used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:

- (a) Whether the child has a particular category of disability and
- (b) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum described in the Kentucky Academic Standards, 704 KAR 3:303 or for a preschool child, to participate in appropriate activities.

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

- (a) Have been validated for the specific purpose for which they are used;
- (b) Be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests; and
- (c) Be conducted under standard conditions unless a description of the extent to

which it varied from standard conditions is documented in the evaluation report.

- (6) The results of the evaluation shall be used by the ARC in meeting the requirements on developing an IEP as provided in 707 KAR 1:320.

Selection and Administration of Tests and Evaluations

- (1) As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, as appropriate, shall review existing evaluation data on the child including:

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

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

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

- (3) As identified by the ARC on the evaluation plan, the child shall be assessed in all areas related to the suspected disability, including, if appropriate:

- (a) Health;
- (b) Vision;
- (c) Hearing;
- (d) Social and emotional status;

- (e) General intelligence;
 - (f) Academic performance
 - (g) Communicative status; and
 - (h) Motor abilities.
- (4) The evaluation shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- (5) Assessment tools used shall be technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (6) 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.
- (7) A single measure, procedure, or assessment shall not be used as the sole criterion for determining eligibility or for determining an appropriate educational program for a child.
- (8) Tests and other evaluation procedures shall include materials tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (9) Tests shall be selected and administered to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

Initial Evaluation

- (1) Before any action is taken with respect to the initial placement of a child with disabilities in a special education program, the MCPS conducts a full and individual evaluation of the educational needs of the child at no cost to parents.
- (2) The ARC ensures that neither specially designed instruction nor related services are provided to a child before a full and individual evaluation is completed and eligibility is determined.
- (3) Upon timely completion of the evaluation (within a 60 school days timeline), following the receipt of parental consent, the MCPS Representative schedules a meeting for the ARC to consider eligibility determination and the development of an IEP, if appropriate.

- (4) This time limit does not apply if the parent repeatedly fails to produce the child for the evaluation.
- (5) Nor does time limit apply if the child transfers to a district while initial evaluation is pending. However, the new district must be making sufficient progress to ensure prompt completion of evaluation; parent and district must agree to a specific time for completion.

Reevaluation

- (1) The MCPS shall ensure a reevaluation, which may consist of the review described in subsection (14) of 707 KAR 1:300, is conducted at least every three (3) years, unless the parent and the MCPS agree that a reevaluation is unnecessary, to determine:
 - (a) The present levels of performance and educational needs of the child;
 - (b) Whether the child continues to need special education and related services; and
 - (c) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.
- (2) A reevaluation shall not be conducted more frequently than once a year, unless the parent and the MCPS agree otherwise.
- (3) The MCPS shall administer tests and other evaluation materials as needed to produce the data identified by the ARC.
- (4) To the extent possible, the MCPS shall encourage the consolidation of reevaluation meetings for the child and other ARC meetings for the child.

Review of Existing Data

- (1) The MCPS is not required to conduct a reevaluation/reassessment if after review of the existing data, the ARC determines:
 - (a) No reevaluation/reassessment is necessary to determine whether the child continues to be eligible for services; and
 - (b) A reevaluation/reassessment is not warranted to determine the child's educational or related service needs, including improved academic achievement and functional performance; and
 - (c) The parents or teacher do not request a reevaluation/reassessment.
- (2) If, for purposes of a reevaluation, the ARC determines that no additional data is needed to determine whether the child continues to be eligible for services or to determine the

educational needs of the child, the designated MCPS representative shall notify the child's parents:

- (a) Of that determination and reasons for it; and
 - (b) Of the right of the parents to request a reevaluation/reassessment to determine whether, for purpose of services, the child continues to be a child with a disability or to determine the educational or related service needs.
- (3) The appropriate MCPS Representative obtains written parental consent before conducting any reassessment even if a parent requested the reassessment.

Graduation or Exceeding Age Range Evaluation Requirements

- (1) The MCPS shall evaluate a child with a disability in accordance with 707 KAR 1:300 and this procedure before determining that the child is no longer a child with a disability.
- (2) The MCPS shall not be required to conduct an evaluation as described in this section before the termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age eligibility for a free, appropriate public education.
- (3) For students who graduate or age out of the program, the MCPS shall provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals.

Chapter IV
Determination of Eligibility
707 KAR 1:310

Section 1: Determination of Eligibility

- (1) Upon analysis of intervention and assessment data, the ARC shall determine whether the child is a child with a disability as defined in 707 KAR 1:002 (1)(9) to the extent that specially designed instruction is required in order for the child to benefit from education.
- (2) A child shall not be determined to be eligible if the determinant factor for that eligibility determination is:
 - (a) A lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act 20 U.S.C. 6301);
 - (b) A lack of appropriate instruction in math, or
 - (c) Due to Limited English proficiency; and
 - (d) If the child does not otherwise meet eligibility criteria.
- (3) In making eligibility determinations, the MCPS shall draw upon information from a variety of sources, which may include:
 - (a) Response to scientific, research-based interventions;
 - (b) Vision, hearing, and communication screenings;
 - (c) Parental input;
 - (d) Aptitude and achievement tests;
 - (e) Teacher recommendations;
 - (f) Physical condition;
 - (g) Social or cultural background;
 - (h) Adaptive behavior; or
 - (i) Behavioral observations.
- (4) The ARC shall ensure that information obtained from these sources, as appropriate for each child, is documented and carefully considered.
- (5) In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate.
- (6) If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for that child.
- (7) The MCPS shall provide a copy of the evaluation report and the documentation for determination of eligibility to the parent.

Section 2: Additional Procedures for Evaluating Children with Specific Learning Disabilities

- (1) The determination of whether a child suspected of having a specific learning disability is a child with a disability, and whether the specific learning disability adversely affects educational performance shall be made by the child's ARC.
- (2) 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.
- (3) 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.
- (4) 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 child progress during instruction, which was provided to the child's parent.
- (5) If the child has not made adequate progress after an appropriate period of time, during which the conditions in paragraphs (4a) and (4b) of this subsection have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered.
- (6) At least one (1) team member other than the child's regular education teacher shall observe the child in the learning environment, including the regular classroom setting, to document academic performance and behavior in the area of difficulty. If the child is less than school age or is out of school, the observation shall take place in an environment appropriate for the child.

- (7) The ARC may determine a child has a specific learning disability if:
- (a) The child is provided with learning experiences and instruction appropriate for the child's age or state-approved grade level standards aligned with the Kentucky Academic Standards (KAS), 704 KAR 3:303; and
 - (b) The child does not achieve adequately for the child's age or grade level standards aligned with the Kentucky Academic Standards, as indicated on multiple data sources, as appropriate, in one or more of the areas listed below:
 - i) Oral expression;
 - ii) Listening comprehension;
 - iii) Written expression;
 - iv) Basic reading skills;
 - v) Reading fluency skills;
 - vi) Reading comprehension;
 - vii) Mathematics calculation; or
 - viii) Mathematics reasoning.
- (8) Additionally, the ARC may determine a child has a specific learning disability if after research based interventions, the child fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Academic Standards (KAS), 704 KAR 3:303 in one or more of the areas listed in this section when assessed, based on the child's response to scientific, research-based intervention.
- (9) The ARC shall not identify a child as having a specific learning disability if deficits in achievement are primarily the result of:
- (a) A visual, hearing, or motor impairment;
 - (b) Mental disability as defined in 707 KAR 1:002 (37);
 - (c) Emotional-behavioral disability;
 - (d) Cultural factors;
 - (e) Environmental or economic disadvantage; or
 - (f) Limited English proficiency.

Documentation of a Specific Learning Disability

- (1) An ARC shall develop documentation of a specific learning disability.
- (2) This documentation shall contain a statement of:
 - (a) Whether the child has a specific learning disability;
 - (b) The basis for making that determination;
 - (c) The relevant behavior noted during the observation;
 - (d) The relationship of that behavior to the child's academic functioning;

- (e) The educationally relevant medical findings, if any;
 - (f) Whether the child does not achieve commensurate with the child's age and ability;
 - (g) Whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas listed in this subsection, that require special education and related services;
 - (h) The determination of the ARC concerning the effects of:
 - i) a visual, hearing or motor disability;
 - ii) intellectual disabilities;
 - iii) emotional disturbance;
 - iv) environmental, cultural factors;
 - v) economic disadvantage;
 - (i) Limited English proficiency on the child's achievement level;
 - (j) The instructional strategies used and the child-centered data collected based on the child's response to scientific, research-based intervention; and
 - (k) Whether deficits have an adverse effect on educational performance.
- (3) 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.
- (4) Each ARC member shall certify in writing whether the report reflects the member's conclusions.
- (5) If it does not reflect the member's conclusions, the team member shall submit a separate statement presenting the member's conclusions.

Chapter V
Individual Education Program
707 KAR 1:320

Section 1: Individual Education Program (IEP)

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

Implementation of the IEP

- (1) The MCPS shall have an IEP in effect for each child with a disability within its jurisdiction at the beginning of each school year.
- (2) The MCPS 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.
- (3) The MCPS shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for the special education and related services to the child is being determined, unless the ARC recommends implementation at a different specified time.
- (4) The MCPS shall ensure that:
 - (a) The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service providers who are responsible for its implementation;
 - (b) Prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and
 - (c) The specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.
- (5) An IEP shall be in place for all eligible children aged three (3) to (21) twenty-one.

Placement at Kentucky School for the Deaf and Kentucky School for the Blind

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

- (3) If placement occurs, the MCPS will ensure that copies of special education records and cumulative records are made available to KSB or KSD personnel.
- (4) After initial placement, KSB/KSD will be asked to be responsible for maintaining the records of the child and copies made available to MCPS's DoSE.

Section 2: ARC Meetings

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

Minor Non-Programmatic Changes to an IEP

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

Timelines

- (1) The MCPS shall provide written notice to the parents of a child with a disability at least seven (7) calendar days before an ARC meeting.
- (2) The MCPS shall ensure that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child:
 - (a) The child is evaluated; and
 - (b) If the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.
- (3) Within this sixty (60) school-day period, the MCPS shall ensure that the ARC meeting to develop an IEP for the child is conducted within thirty (30) days of the determination that the child is eligible to receive special education services.
- (4) The appropriate MCPS 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:
 - i) Any lack of expected progress toward the annual goals;
 - ii) Any lack of expected progress in the general education curriculum, if appropriate;
 - iii) The results of any reevaluation;
 - iv) Information about the child provided by, or to, the parents;
 - v) The child's anticipated needs; or
 - vi) Other matters.

Exceptions to Timelines

- (1) The appropriate MCPS representative shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before an ARC meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct. (Section 3 of KAR 1:340 (2))
- (2) The sixty (60) school-day timeline shall not apply in the following situations:
 - (a) If the child moves to the MCPS after consent for the initial evaluation is given but before the evaluation can be completed, as long as the MCPS is making sufficient progress to complete the evaluation and the parent and the MCPS 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.

Section 3: ARC Membership

- (1) The appropriate MCPS Representative shall ensure that the ARC for each child with a disability includes:
 - (a) The parents of the child;
 - (b) Not less than one (1) regular education teacher of such child (if the child is, or may be, participating in the regular education environment) to provide information about the general education curriculum for same aged peers:
 - i) If the child is served by more than one regular education teacher, the MCPS Representative selects a regular education teacher or teachers qualified to teach a student of his/her age.
 - ii) The regular education teacher(s) selected shall be in attendance at the ARC meeting during development, review, and revision of the IEP, as appropriate.
 - (c) Not less than one (1) special education teacher of the child or a special education teacher who is knowledgeable about the child's suspected disability,

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

- (d) A Representative of the MCPS, ARC Chairperson, who is qualified to provide, or supervise, the provision of, specially designed instruction to meet the unique needs of students with disabilities, and is knowledgeable about the general education curriculum and the availability of the resources of the MCPS;
- (e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (d) of this subsection;
- (f) Individuals who have knowledge or special expertise regarding the child, at the discretion of the parent or the MCPS;
- (g) Related services personnel, as appropriate; and
- (h) The child, whenever appropriate.

(2) The MCPS Board of Education must approve ARC Chairpersons by name or title.

Dismissal Agreement of ARC Member Attendance

- (1) A member of the ARC team listed above may be dismissed from attendance, in whole or in part, if the parents and the MCPS Representative agree in writing prior to the ARC meeting to waive the attendance of that member even though the member's area of curriculum or related services will be discussed or modified if:
- (a) The parent and the MCPS consent in writing to the excusal; and
 - (b) The member submits, in writing, to the parent and the ARC team, input into the development of the IEP prior to the meeting.

Purpose of ARC Includes Transition Services

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

Purpose of ARC is to Determine SLD Eligibility

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

Purpose of ARC is Transition from Early Intervention Program

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

Section 4: Parent Participation

Customary ARC Meetings

- (1) The MCPS shall ensure that one or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate.
- (2) The meeting shall be scheduled at a mutually agreed upon time and place.
- (3) The appropriate MCPS Representative shall send an ARC meeting invitation to the parents which includes:
 - (a) The purpose;
 - (b) Time;
 - (c) Location of the meeting;
 - (d) Who will be in attendance by role/title;
 - (e) Notice that the parents may invite people with knowledge or special expertise of the child to the meeting; and
 - (f) Notice that the MCPS will invite representatives from the early intervention program to the initial meeting, if the parent requests it.
- (4) When using an interpreter or other action, as appropriate, the appropriate MCPS Representative shall take whatever action is necessary to ensure the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- (5) The MCPS Representative shall give the parent a copy of the child's IEP at no cost to the parent at the conclusion of the ARC meeting or mail a copy with the notice of proposed or refused action three (3) school days after the meeting if the parents fail to attend.

Parent Participation When Not in Attendance

- (1) The appropriate MCPS Representative shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference, telephone calls or video conferencing.
- (2) An ARC meeting may be conducted without a parent in attendance if the MCPS is unable to convince the parent that he/she should attend.
- (3) The MCPS shall have a record (in the special education records of the student) of its attempts to arrange a mutually agreed upon time and place, which may include:
 - (a) Detailed records of telephone calls made or attempted and the results of those calls;
 - (b) Copies of correspondence sent to the parents and any responses received; and
 - (c) Detailed records of visits to the parent's home or place of employment and the results of those visits.

Discipline/Safety ARC Meetings

- (1) The appropriate MCPS representative shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before an ARC meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct. (Section 3 of KAR 1:340 (2))
- (2) ARC may convene in less than 24 hours for disciplinary or safety issue with parent consent.

Transition Needs

- (1) If the child is in the eighth grade year, or beginning no later than the IEP that will be in effect when the child turns fourteen (14), the invitation shall:
 - (a) State that a purpose of the meeting will be the development of a statement of need for transition services for the child and
 - (b) State that the child is invited.
- (2) This subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.
- (3) For a child with a disability, beginning no later than the IEP that will be in effect when the child turns sixteen (16), the invitation shall:
 - (a) State that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the child, and
 - (b) Include the identity of any other agency that is invited to send a representative with parent or emancipated child's permission.

- (4) This subsection shall apply to a child younger than sixteen (16) years of age if determined to be appropriate by the ARC.

Section 5: Contents of IEP

- (1) An ARC shall consider in the development of an IEP:
- (a) The strengths of the child and the concerns of the parents for enhancing the education of their child;
 - (b) The results of the initial or most recent evaluation of the child;
 - (c) As appropriate, the results of the child's performance on any general state or district-wide assessment programs; and
 - (d) The academic, developmental, and functional needs of the child.
- (2) An ARC shall:
- (a) In the case of a child whose behavior impedes his or her learning or that of others, consider, the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
 - (b) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
 - (c) In the case of the child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (d) Consider the communication needs of the child;
 - (e) In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
 - (f) Consider whether the child requires assistive technology devices or services.
- (3) All the factors listed in this Section 5 shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.
- (4) Once the ARC has considered all the factors listed in this Section, the ARC shall include a statement on the IEP indicating the need for a particular device or service (including an intervention, accommodation, or other program modification), if any are needed, in order for the child to receive a free appropriate public education (FAPE).

- (5) A regular education teacher of the child, as a member of the ARC, shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate:
- (a) Positive behavioral interventions, strategies, and supports for the child;
 - (b) Supplementary aids and services; and
 - (c) Program modifications or supports for school personnel that will be provided for the child.
- (6) An ARC shall not be required to include information under one component of a child's IEP that is already contained under another component of the child's IEP.
- (7) The IEP for each child shall include:
- (a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum as provided in the Kentucky Academic Standards, 704 KAR 3:303, or for preschool students, as appropriate, how the disability affects the child's participation in appropriate activities; and
 - (b) A statement of measurable academic and functional annual goals designed to:
 - i) Meet the child's needs that result from the disability to enable the child to be involved in and progress in the general education curriculum as provided in the Kentucky Academic Standards (KAS), 704 KAR 3:303, or for preschool students, as appropriate, to participate in appropriate activities, and
 - ii) Meet the child's other educational needs that result from the disability.
 - (c) For students with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks and short-term objectives will be developed as a part of the IEP.
- (8) An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child.
- (9) There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:
- (a) Advance appropriately toward attaining the annual goals;
 - (b) Be involved and make progress in the general education curriculum;
 - (c) Participate in extracurricular and other nonacademic activities; and
 - (d) Be educated and participate with other students with and without disabilities.
- (10) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with non-disabled children in regular classes and in extracurricular and

nonacademic activities.

- (11) An IEP shall contain a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district wide assessments. These accommodations shall be based on the requirements contained in 703 KAR 5:070, "Inclusion of Special Populations in the State-required Assessment and Accountability Programs".
- (12) If the ARC determines the child meets the criteria for participation in the alternate assessment as provided in 703 KAR 5:070, it shall provide a statement of its decision and the reasons for the decision annually.
- (13) An IEP shall include:
 - (a) The projected date of the beginning of the services;
 - (b) Modifications listed on the IEP;
 - (c) The anticipated frequency,
 - (d) Location (whether regular or special education), and
 - (e) Duration of those services and modifications.
- (14) An IEP shall include a statement of:
 - (a) How the child's progress toward meeting the annual goals will be measured; and
 - (b) When periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.
- (15) The IEP shall also include the requirements for transition services for eligible students as detailed in Section 7 of 707 KAR 1:320.

Section 6: Program for Students who Transfer

See Chapter II, Section 10

Section 7: Transition Services

- (1) In the child's eighth grade year, or beginning no later than the IEP that will be in effect when the child turns fourteen (14), 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 transition service needs of the child under the applicable components of the child's IEP that focus on the child's course of study. This statement shall be updated annually.
- (2) For a child with a disability, beginning no later than the IEP that will be in effect when the child turns sixteen (16), the IEP shall include:

- (a) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment, and, where appropriate, independent living skills; and
 - (b) The transition services (including the course of study) needed to assist the child in reaching these goals. This statement shall be updated annually.
- (3) Transition services for children with disabilities may be special education, if provided as specially designed instruction or related services, and if required to assist a child with a disability to benefit from special education.
- (4) At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of his/her rights under 707 KAR Chapter 1 and that the rights will transfer to the child upon reaching the age of majority.
- (5) If an agency, other than the MCPS, (or state agency responsible for developing the child's IEP) fails to provide the transition services described in the IEP, the MCPS (or the state agency responsible for developing the child's IEP) shall reconvene the ARC to identify alternative strategies to meet the child's transition objectives set out in the IEP.
- (6) A participating agency shall not be relieved of the responsibility under IDEA to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of the agency.

Section 8: Private School Placements by the MCPS

- (1) Prior to placing a child with a disability in, or referring a child to, a private school or facility, the MCPS shall initiate and conduct an ARC meeting to develop an IEP for the child.
- (2) The appropriate MCPS Representative shall ensure a representative of the private school or facility attends the meeting.
- (3) If the representative cannot attend, the appropriate MCPS Representative shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- (4) 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 MCPS.
- (5) If a private school or facility initiates the meetings, the MCPS shall ensure that the parents and MCPS 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.
- (6) If a child with a disability is placed by the MCPS in a private school or facility, the MCPS shall remain responsible for compliance with 707 KAR Chapter 1.
- (7) If the MCPS places a child with a disability in, or refers a child with a disability to a private

school, it shall ensure that the child:

- (a) Is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR 1:340, and at no cost to the parents;
- (b) Is provided an education that meets the standards of the MCPS, including general education curriculum standards; and
- (c) Has all the rights of any child with a disability served by the MCPS.

Section 9: IEP Accountability

- (1) The MCPS shall provide specially designed instruction and related services to each child with a disability in accordance with his/her IEP and shall make a good faith effort to assist the child in achieving the goals, objectives, or benchmarks listed in the IEP.
- (2) The MCPS shall be responsible for including students with disabilities in the state-wide assessment as provided in 703 KAR 5:070.
- (3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel good faith efforts are not being made.

Chapter VI
Procedural Safeguards and State Complaint Procedures
707 KAR 1:340

Section 1: Parent Participation in Meetings

- (1) A parent of a child with a disability shall be afforded an opportunity to:
 - (a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and
 - (b) Participate in all ARC meetings concerning their child.
- (2) The MCPS shall provide parents a written notice of ARC meetings in accordance with administrative regulation.
- (3) The MCPS shall keep a record of its attempts to arrange a mutually agreed upon time and place. These records may include:
 - (a) Detailed records of telephone calls made or attempted and the results of those calls;
 - (b) Copies of correspondence sent to the parents and any responses received; or,
 - (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (4) The MCPS 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 to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.
- (5) The MCPS may conduct an ARC meeting without the parent in attendance if, after reasonable effort, the district was unable to convince the parent/guardian to attend.

Section 2: Independent Educational Evaluation

- (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.
- (2) If a parent requests an independent educational evaluation, the MCPS shall provide information to the parent about where an independent educational evaluation may be obtained and the MCPS's applicable criteria for independent educational evaluations.

- (3) If a parent requests an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the MCPS, the MCPS 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 MCPS demonstrates in a due process hearing that the evaluation obtained by the parent did not meet its criteria.
- (4) The MCPS may ask for the parent's reasons why he objects to the MCPS's evaluation, however, the parent shall not be required to respond and the MCPS shall not delay its action under paragraph (3) of this subsection while waiting for a response from a parent.
- (5) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the MCPS uses when it initiates an evaluation.
- (6) Aside from these criteria, the MCPS shall not impose any other conditions or timelines relating to obtaining an independent educational evaluation at public expense.
- (7) The DoSE shall provide the criteria listed above to the MCPS Representative.
- (8) A parent is entitled to only one (1) independent educational evaluation at public expense each time the MCPS conducts an evaluation with which the parents disagree.
- (9) If the MCPS initiates a due process hearing after receiving a request for an independent educational evaluation, and the final decision is that the MCPS's evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.
- (10) If the parent obtains an independent educational evaluation at public or private expense and it meets the agency criteria, the results of the evaluation shall be considered by the MCPS in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child.
- (11) If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

Section 3: Notices to Parents

Notice of ARC Meeting

- (1) The appropriate MCPS Representative shall provide written notice to the parents of a child with a disability, which may be by email if the parent and the MCPS agree. Parent agreement shall be documented by the appropriate MCPS Representative or designee.
- (2) Except for meetings concerning a disciplinary change in placement or a safety issue, the MCPS shall provide written notice to the parents of a child with a disability at least seven (7)

calendar days before an ARC meeting in which the LEA:

- (b) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (c) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

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

Notice of Proposed or Refused Action (Conference Summary)

(1) This Notice of Proposed or Refused Action shall include:

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

(2) The MCPS Representative:

- (a) Shall give a copy of the Notice of the Proposed or Refused Action (Conference Summary) to the parents at the end of the meeting if a parent attends. The proposed action may be implemented immediately if parents received notice in the meeting.
- (b) Shall mail the Notice of the Proposed or Refused Action (Conference Summary) within three (3) school days to parents who did not attend the meeting. If no due process hearing has been requested challenging the proposed or refused action, the proposed action will be implemented no later than ten (10) school days following the meeting.

- (3) The Notice of the Proposed or Refused Action (Conference Summary) shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so.
- (4) If the native language of the parent is not a written language, the MCPS shall take steps to ensure:
 - (a) That the notice is translated orally or by other means, so the parent understands the content of the notice; and
 - (b) That there is written evidence of this translation.
- (5) The native language of the parent of a child is the definition of native language used in 707 KAR 1:002.
- (6) The MCPS Representative, after consulting with the DoSE, obtains the necessary translation or interpretation, if feasible.
- (7) The MCPS Representative and DoSE keep copies of all correspondence involved in securing the necessary interpretation or translation in his/her administrative files.

Section 4: Procedural Safeguards Notice

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

The Procedural Safeguards Notice (Parent Rights)

- (1) Shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504 and be written in the native language of the parents (unless it is clearly not feasible to do so) and written in a manner easily understandable to the general public.
- (2) The parent of a child with a disability and the MCPS may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Section 5: Parental Consent

Obtaining and Documenting Parental Consent

- (1) The appropriate MCPS Representative shall obtain informed, written parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.
- (2) Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.
- (3) The MCPS must make reasonable efforts to obtain these consents. To show the reasonable efforts made, the MCPS shall keep documentation, which may include:
 - (a) Detailed records of the telephone calls made or attempted and the results of those calls;
 - (b) Copies of correspondence sent to the parents and any responses received; and
 - (c) Detailed records of the visits made to the parent's home or place of employment and the results of those visits.
- (4) The appropriate MCPS Representative shall document attempts to obtain parental consent, which may include attempts to obtain parental consent through any of the means described in (a), (b), or (c) above.
- (5) The MCPS Representative maintains documentation of these attempts in the child's special education records.

Consent When Parent is Unavailable

- (1) If the child is a foster child, or is in the custody of a public child welfare agency, and is not residing with the parent, but parental rights have not been terminated, the MCPS shall make reasonable efforts to obtain informed consent from the parent for any consent required under IDEA, including consent for an initial evaluation.
- (2) A judge may order that someone other than the parent/s may give consent for initial evaluation in accordance with Section 6.
- (3) If the child is in the custody of the state and is not residing with the child's parent, the MCPS is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the student if:
 - (a) Despite reasonable efforts, the MCPS cannot discover the whereabouts of the parent(s);
 - (b) The rights of the parent(s) have been terminated by a court of competent jurisdiction; or

- (c) The rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the student has given consent to the initial evaluation.
- (4) In order to document the reasonable efforts taken by the MCPS to discover the whereabouts of the parent(s), the MCPS shall keep a record of its attempts which may include:
 - (a) Detailed records of telephone calls made or attempted and the results of those calls;
 - (b) Copies of correspondence sent to the parents and any responses received; and
 - (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Refusal to Consent to Initial Evaluation

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

Refusal to Consent for Initial Placement

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

Consent for Reevaluation

- (1) The MCPS shall obtain consent before conducting a reevaluation of a child with a disability. If the parent refuses to consent, the MCPS may pursue the reevaluation by using the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing.
- (2) Parental consent for reevaluation shall not be required if the MCPS can demonstrate that:

- (a) It made reasonable efforts to obtain such consent and followed the procedures in this section to document those efforts; and
- (b) The parent failed to respond.

Consent Not Required

- (1) Parental consent shall not be required before:
 - (a) Reviewing existing data as part of an evaluation or reevaluation; or
 - (b) Administering a test or other evaluation that is administered to all students unless consent is required of all parents before the administration of the test or evaluation.
- (2) The MCPS shall not be considered to be in violation of the requirements to make a free appropriate public education available to the child if the school district decides not to pursue the consent through due process procedures set out in Sections 9 and 11 of 707 KAR 1:340 and the MCPS shall not be required to convene an ARC meeting or develop an IEP if the parent of the child:
 - (a) Fails to respond or refuses to consent to a request for evaluation;
 - (b) Fails to respond or refuses to consent to a request for services; or
 - (c) Refuses to consent to a reevaluation
- (3) The appropriate MCPS Representative shall document the parent refusal or failure to respond.

Home/Private School – Failure or Refusal to Consent

- (1) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent:
 - (a) The MCPS may not use the consent override procedures of the law in an attempt to force the evaluation, and
 - (b) The MCPS is not required to consider the child as eligible for services under [34 CFR. §§ 300.132 through 300.144](#).

Section 6: Representation of Children

Determination of Representation

- (1) MCPS shall ensure the rights of a child are protected by determining an educational representative for the child.
- (2) No later than at the time of referral, the MCPS Representative, through a review of the records of the child, determines if a child is:

- (a) Emancipated (age 18 or married) and therefore represents himself in educational decision-making; or
- (b) To be represented by an adult, such as a parent, a guardian, a person acting as a parent, a surrogate parent, or a long-term foster parent.

Parent Defined

(1) According to 707 KAR 1:002 (44), "parent" means:

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

Child Does Not Reside with Parent

- (1) If the child is a foster child and does not reside with the child's parents, the MCPS shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation.
- (2) The MCPS shall not be required to obtain this consent if:
 - (a) Despite reasonable efforts, the MCPS cannot discover the whereabouts of the parents;
 - (b) The rights of the parents have been terminated in accordance with state law; or

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

- (3) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 707 KAR 1:002, shall be presumed to be the parent for purposes of 707 KAR Chapter 1, unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.
- (4) If there is a judicial order that identifies a specific person or persons under 707 KAR 1:002(43)(a)-(d) to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.
- (5) The appropriate MCPS Representative reviews appropriate records and may contact appropriate state agencies to assist with the determination of the need for a surrogate parent.
- (6) The MCPS Representative assures that each child is represented by an appropriate educational representative at all decision-making points in the process of identification, evaluation, placement and provision of a free and appropriate public education.
- (7) As soon as possible after the referral is completed, the MCPS Representative determines if the child is emancipated, and therefore represents himself in educational decision-making or must be represented by an adult, such as a biological or adoptive parent, legal guardian, person acting as a parent, or surrogate parent.
- (8) If the MCPS Representative determines the child is to be represented by a legal guardian, or is emancipated by court order or marriage, the MCPS Representative contacts the DPP, who is responsible for obtaining an official copy of the court order, appointing the guardian, or emancipating the child, or official proof of the marriage.
- (9) The official copy of the court order or proof of marriage document is placed in the educational records of the child.

Determining Need for a Surrogate Parent

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

Surrogate Parent Appointment

- (1) The MCPS shall ensure the rights of a child are protected by determining a legally appropriate educational representative for the child. The MCPS shall appoint a surrogate parent to make educational decisions for the child if:
 - (a) No parent as defined in 707 KAR 1:002 can be identified;
 - (b) The MCPS, after reasonable efforts, cannot discover the whereabouts of the parents;
 - (c) The child is a ward of the state as defined in 707 KAR 1:002; or
 - (d) The child is an unaccompanied homeless child as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431.
- (2) The MCPS shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, such as:
 - (a) Detailed records of the telephone calls made or attempted and the results of those calls;
 - (b) Copies of correspondence sent to the parents and any responses received; and
 - (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (3) The MCPS shall have a procedure for selecting surrogates. A surrogate:
 - (a) Shall not be an employee of KDE, the MCPS, or any other agency that is involved in the education or care of the child;
 - (b) Shall not have any personal or professional interest that conflicts with the interests of the child; and
 - (c) Shall have knowledge and skills that ensure adequate representation of the child.
- (4) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the MCPS solely because he or she is paid by the MCPS to serve as a surrogate parent.
- (5) The DoSE, or designee, develops a pool of potential surrogate parents. The DoSE maintains a file of eligible surrogate parent applications, including the names, addresses, phone numbers and training status of the individuals who have agreed to serve as surrogate parents.
- (6) DoSE, or designee, makes arrangements for training persons selected as surrogate parents to assist them with acquiring knowledge and skills to effectively represent the children.
- (7) If a surrogate is assigned because the parents cannot be located, the DoSE, or designee, sends a notice of intent to assign a surrogate parent to the last known address of the child's biological or adoptive parents or legal guardians.

- (8) The MCPS shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the MCPS that the child needs a surrogate.
- (9) The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.
- (10) When a child with a disability reaches the age of majority, all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. The MCPS shall notify the child with a disability and the parents of the transfer of the rights.
- (11) In the case of a child who is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (1) of this section until a surrogate parent can be appointed that meets all the requirements of this section.
- (12) If the whereabouts of the biological or adoptive parents or legal guardians become known, future notices of meetings must be sent to, and required signatures must be obtained from, a biological or adoptive parent or legal guardian of the child.
- (13) The DoSE, or designee, notifies the surrogate in writing of termination of the need for the surrogate parent due to:
 - (a) Expiration of the assignment period;
 - (b) If the whereabouts of the biological or adoptive parents or legal guardians become known;
 - (c) Upon emancipation of the child; or
 - (d) If the surrogate no longer meets the qualifications and criteria to serve as a surrogate parent.
- (14) If the DoSE determines the surrogate is no longer needed due to any of the reasons listed above the DoSE sends written notice to the surrogate informing the surrogate of the termination and indicating the reasons for termination. A copy of the letter is maintained in the files of the DoSE.
- (15) The DoSE maintains written documentation relative to any disagreement regarding the choice of a surrogate in his/her administrative files.

Letter of Assignment to Surrogate Parent

- (1) The DoSE sends a letter of assignment to the surrogate.
- (2) The letter of assignment contains a statement of commitment and acceptance which the appointed surrogate signs and returns to the DoSE.

- (3) Upon receipt of the individual's signed indication of willingness to serve as surrogate, the DoSE enters the name and address of the surrogate in the educational record of the student and informs MCPS Representative that a surrogate has been selected.

Surrogate Parent Training

- (1) The DoSE provides information to persons selected as surrogate parents to assure these persons have sufficient knowledge and skills to effectively represent the child. Such information includes:
 - (a) The role of the surrogate parent;
 - (b) The rights and responsibilities of parents of children and children with disabilities;
 - (c) Available resources for additional information and assistance;
 - (d) Procedures to follow to be excused from appointment when there is a possibility of a potential conflict of interest;
 - (e) Conditions for termination as a surrogate; and
 - (f) Notification that the surrogate has the right to represent the child in all matters related to the educational rights of the child.
- (2) MCPS Representative will review the role and responsibility of the surrogate parent in the educational decision making process, review parents' rights and due process rights, and address any questions the surrogate may have regarding the printed materials already received and read.

Section 7: State Complaint Procedures

See Appendix for the Kentucky regulation on the State Complaint Procedures.

(Refer to the KDE Special Education Procedures Manual (State Plan) for other provisions regulating the complaint process.)

Section 8: Right to Mediation and Due Process Hearings

- (1) The MCPS and parent of a child with a disability shall have the right to request mediation from KDE to resolve any disputes that may arise under 707 KAR Chapter 1.
- (2) When a hearing is initiated, the appropriate MCPS Representative shall inform the parent of the availability of mediation to resolve the dispute.
- (3) The appropriate MCPS Representative shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or if a parent or the MCPS initiates a hearing.
- (4) The DoSE shall provide the MCPS Representative with a list of these legal or other relevant services.

Section 9: Mediation Rights

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

See Appendix for the Kentucky regulation on Mediation Rights.

Section 10: Dispute Resolution Meetings

See Appendix for the Kentucky regulation on Dispute Resolution Meetings.

Section 11: Hearing Rights

See Appendix for the Kentucky regulation on Hearing Rights.

Section 12 – Appeal of Decision

See Appendix for the Kentucky regulation on Appeal of Decision

Section 13: Discipline Procedures

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

(2) A “Change of placement because of disciplinary removals” means:

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

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

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

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

- (4) School personnel may remove a child with a disability from the child's current placement for additional periods of time of not more than ten (10) consecutive school days in the same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement because of disciplinary removals.
- (5) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described below in subsection (6) (a) and (b) shall be provided beginning the 11th day and any subsequent days of removal.
- (6) A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days, shall:
 - (a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
 - (b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications that are designed to address the behavior violation so that it does not recur.
- (7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.
- (8) The MCPS shall provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to students without disabilities who are similarly removed.
- (9) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, and the current removal is for not more than ten (10) consecutive school days and is not a change in placement because of disciplinary removals, school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which educational services explained in subsection (6) of this section are needed.
- (10) Before the child is removed for the 11th day in any school year and before any subsequent removals during the same school year, the building principal, and the DoSE, or designee, determine if the removal constitutes a change in educational placement. They must be in agreement that the removal is not an educational change in placement. If they do not so agree, the removal is treated as a change in educational placement.
- (11) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the MCPS shall notify the parents of the decision and provide the parents with a copy of the

procedural safeguards including parent's rights in accordance with Section 4 of 707 KAR 1:340.

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

(13) If a removal is a change in placement because of disciplinary removals, the child's ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child.

(14) If the child has been placed in an interim alternative educational setting, the MCPS shall invite staff from that alternative setting to the ARC meeting.

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

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

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

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

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

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

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

(a) Conduct/provide for a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or

(b) Review the behavioral intervention plan, (if one has already been developed) and modify it, as necessary, to address the behavior; and

- (c) Return the child to the placement from which the child was removed unless the MCPS and the parent agree to a change of placement as part of modification of the behavioral intervention plan or because of the special circumstances (interim alternative educational setting) explained in subsection (5) of 707 KAR 1:340.
- (5) If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities for removals that would exceed ten (10) consecutive school days.
 - (6) If the ARC determines the behavior is not related to the disability of the child, the summary recorder documents the ARC's decision on the district form including:
 - (a) The decision of the ARC;
 - (b) A description of any evaluation procedure, test, record, or report the ARC used to reach its decision; and
 - (c) Any other factors relevant to the ARC's decision.
 - (7) The MCPS Representative informs the Superintendent of the ARC's decision within three (3) school days of the ARC's determination that the behavior is not related to the disability of the child, if the Superintendent did not serve as the MCPS Representative,
 - (8) If this determination is made, the Superintendent may recommend expulsion to the MCPS Board of Education according to the MCPS's regular policies and procedures for expulsion.
 - (9) Educational services must be provided to the extent necessary to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the child's IEP during any removals that exceed ten (10) school days in any school year irrespective of whether the behavior is determined to be a manifestation of the child's disability.
 - (10) School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability if the child:
 - (a) Carries a weapon to, or possesses a weapon at, school, on school premises, or to, or at, a school function under the jurisdiction of KDE or the MCPS;
 - (b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the KDE or the MCPS; or
 - (c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of KDE or the MCPS.

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

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

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

(2) Before imposing, or applying to a hearing officer or judge for an interim alternative educational setting placement, the ARC shall attempt to obtain parental agreement to the proposed change of placement.

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

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

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

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

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

(6) An appeal under this section shall:

(a) Be conducted in an expedited manner;

(b) Occur within twenty (20) school days from the date the request is filed; and

(c) Result in a determination within ten (10) school days after the hearing.

(7) The Superintendent, or designee, may apply to an appropriate court for injunctive relief under KRS 158.150 or federal IDEA provisions if the parent and the other members of the ARC cannot agree upon a placement and the current placement will likely result in injury to the child or others.

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

Basis of Knowledge

- (1) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for students already eligible for special education services if the MCPS had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (2) The MCPS shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:
 - (a) The parent of the child has expressed concern in writing (or orally if the parent cannot express it in writing) to supervisory or administrative personnel of the appropriate LEA (the MCPS), or to a teacher of the child, that the child is in need of special education and related services;
 - (b) The parent of the child has requested an evaluation for special education services; or
 - (c) The teacher of the child, or other personnel of the MCPS, has expressed concern about a pattern of behavior or performance demonstrated by the child directly to the MCPS Director of Special Education or to other supervisory personnel of the MCPS.
- (3) The MCPS shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that the child may have a disability, the MCPS:
 - (a) Conducted an evaluation and determined the child was not a child with a disability;
 - (b) Determined an evaluation was not necessary and provided notice to the parents of these determinations; or
 - (c) The parents refused to consent to an evaluation or refused initial services.
- (4) Conditions that apply if the MCPS does not have a Basis of Knowledge:
 - (a) If the MCPS does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors.
 - (b) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner.
 - (c) Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or

expulsion without educational services unless educational services are required under some other provision of law.

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

Section 17: Reporting to Law Enforcement Agencies

- (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to appropriate authorities.
- (2) If the MCPS reports a crime committed by a child with a disability, the building principal, or designee, shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, 20 USC Section 1232g.

**Chapter VII
Placement Decisions
707 KAR 1:350**

Section 1: Placement Decisions

- (1) To the maximum extent appropriate, the MCPS shall ensure that children with disabilities, including children placed by the MCPS in public or private institutions or other care facilities, are educated with students who are non-disabled.
- (2) All services and educational placements are individually determined based on the child's unique abilities and needs.
- (3) The MCPS shall ensure that special classes, separate schooling or other removal of students 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.

Continuum of Placement Alternatives

- (1) The MCPS shall ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.
- (2) The continuum shall include the alternative placements of:
 - (a) Instruction in regular classes;
 - (b) Special classes;
 - (c) Special schools;
 - (d) Home instruction; and
 - (e) Instruction in hospitals and institutions.
- (3) Ensuring a continuum of alternative placements does not mean that each alternative placement is located within the geographic boundary of MCPS.
- (4) The MCPS shall make provision for supplementary services to be provided in conjunction with regular class placement if/as determined needed by the ARC for each individual student with a disability.

ARC Determination of Placement

- (1) In determining the educational placement of a child with a disability, the MCPS shall ensure that the placement decision is made by the ARC in conformity with the least restrictive environment provisions.
- (2) 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.
- (3) Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he/she would attend if non-disabled.
- (4) 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/she needs.
- (5) A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.
- (6) Examples of such changes, if needed, may include:
 - (a) Changing the physical environment (e.g., preferential seating, special lighting);
 - (b) Using supplementary aides and services (e.g. large print books);
 - (c) Reorganizing staff patterns (e.g., adding instructional assistant support);
 - (d) Implementing different modes of instruction (e.g., whole language approach, cooperative learning, social skills instruction);
 - (e) Making adaptations to the curricula (e.g., learning strategies or styles, scope of concepts); or
 - (f) Training personnel (e.g., special instructional methods, positive behavior interventions).
- (7) In providing or arranging for the provision of nonacademic and extracurricular services and activities, the MCPS shall ensure that a child with a disability participates with non-disabled students in those services and activities to the maximum extent appropriate to the needs of the child.
- (8) The appropriate MCPS Representative obtains written parental consent for initial services.
- (9) If the parent does not attend the ARC meeting, the appropriate MCPS Representative sends notice of proposed or refused action to the parent with a request for written consent for initial services, if appropriate.

Change in Placement / Services

- (1) An ARC considers/determines all changes of placement/services based on the above procedures and on placement in the least restrictive environment.
- (2) Changes in placement may include, among others, the following:
 - (a) Initiation of, or changes in, specially designed instruction and related services;
 - (b) Changes in specially designed instructional setting (e.g., regular class to resource class; resource to special class, shortened school day);
 - (c) Return to full-time regular education services due to concluding specially designed instruction and related services;
 - (d) Disciplinary removals as defined in 707 KAR 1: 002;

- (e) Receipt of a regular high school diploma;
- (f) Completion of alternative diploma program prior to aging out;
- (g) Aging out of eligibility.

(3) For a student whose eligibility terminates under subsection (2) (e), (f) or (g) immediately above, the MCPS shall provide the student with a summary of his/her academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting his/her postsecondary goals.

Shortened School Day

- (1) The ARC determines any variation of the length of the school day for a child with a disability by reviewing the IEP and other relevant data as required by KDE and makes decisions based on that review.
- (2) The MCPS Representative must inform the DoSE if an ARC determines the condition of any child with a disability warrants less than a full day of attendance.
- (3) The ARC and the DoSE follow KDE regulations and procedures and all local Board of Education policies and procedures (MCPS Board Policies 08.31 and 09.1221) concerning a shortened school day.

Release from Special Education and Related Services

- (1) A reevaluation, which may consist of a review of existing data, shall be conducted before determining a child is no longer a child with a disability under IDEA.
- (2) During a review of the IEP, if the ARC determines all of the goals and objectives have been achieved, then the ARC decides if the child continues to need specially designed instruction and related services.
- (3) The ARC uses the IEP, transition plan progress data, reevaluation information, regular education program information (e.g., environmental demands, ranges of functioning), to answer the following questions to determine if a child no longer needs special education and related services:
 - (a) Is the current functioning level of the child within the performance range of similar age peers without disabilities?
 - (b) Does the child have strategies, skills, and behaviors needed to achieve education expectations and to cope with the demands of the regular education program and environment?
 - (c) Can the regular education program accommodate the child through services available to similar age peers in the regular education program who are not disabled?

- (4) A child is released when the ARC determines the child no longer needs specially designed instruction and related services. This means the ARC determines that the child:
- (a) Can function in the regular education program without specially designed instruction and related services; and
 - (b) Has reached an educational achievement level which falls within the expected performance range for the course of study followed by similar age non-disabled peers (the disability no longer adversely affects their education); or
 - (c) Is no longer identified as educationally disabled (e.g., child who has had surgery to correct vision or hearing problems, child's health condition is successfully treated with medical intervention, or child's speech articulation issues have been corrected).
- (5) Each child released by the ARC is returned to the class, school and location where he or she would be if not disabled and in need of specially designed instruction and related services.

Graduation

- (1) Graduation is defined as completion of the established program of study leading to the receipt of a diploma.
- (2) There is no requirement for a reevaluation prior to this change in placement.
- (3) At the annual review meeting prior to a child's expected graduation date, the ARC:
- (a) Reviews the child's progress in the current program;
 - (b) Reviews and revises the transition plan and IEP, if appropriate;
 - (c) Determines if the child meets, or is scheduled to complete at the conclusion of the coming school year, the requirements for graduation;
 - (d) Determines any support or assistance the child needs for successful participation in the commencement ceremonies (wheelchair access, etc.); and
 - (e) Documents on the meeting summary, or IEP as appropriate, all decisions of the committee.
- (4) Eligibility for special education and related services ceases upon graduation with a general diploma.
- (5) A child's graduation is subject to notice requirements according to procedure in Section (3) three of 707 KAR 1:340.

Completion of Alternative Diploma Program

- (1) A child with a disability who is prevented by a cognitive impairment from meeting the same criteria for graduation as students without disabilities and who meets the criteria for an alternative assessment is issued an alternative diploma upon completing a program designed

by the ARC.

- (2) At the annual review meeting prior to a child's expected graduation date, the ARC:
 - (a) Reviews the child's progress in the current program;
 - (b) Reviews, and revises the transition plan and IEP, if appropriate;
 - (c) Considers a reevaluation, if the child is not also aging out.
 - i) Reevaluation may consist of a review of existing data.
 - ii) If necessary, the ARC meets again to review new reevaluation results and determine completion of program;
 - (d) Determines any support or assistance the child needs for successful participation in the commencement ceremonies; and
 - (e) Documents on the meeting summary all decisions of the committee.
- (3) School completion with an alternative diploma, and not a diploma, is a change of placement that requires a reevaluation.
- (4) If the child is not also "aging out", specific decisions must be documented by the ARC that the child has completed his/her public school education, and it must be realized that the child could return to school until aging out.
- (5) The child participates in commencement exercises according to school commencement procedures and receives recognition with no distinction regarding disability made in the ceremony.
- (6) The alternative diploma would be given at the time of IEP program completion, and this may occur at a later date than the commencement exercise (such as students who continue until age 21/aging-out).

Release Due to Aging Out

- (1) Aging out is defined as exceeding 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 child.
- (2) A child may finish the semester in which he/she turns twenty-one (21).
- (3) This is a change in placement; however, a reevaluation is not required.

Section 2: Class Size

- (1) The MCPS shall provide special education for each child with a disability in accordance with the following maximum caseloads for special classes, as determined by KDE for each child with a disability as follows:
 - (a) Emotional-Behavior Disability is eight (8);
 - (b) Functional Mental Disability is ten (10);

- (c) Hearing Impairment is six (6);
 - (d) Mild Mental Disability is fifteen (15);
 - (e) Multiple Disabilities is ten (10);
 - (f) Orthopedic Impairment is sixteen (16);
 - (g) Other Health Impairment is sixteen (16);
 - (h) Specific Learning Disability for primary is ten (10) and for secondary is fifteen (15); and
 - (i) Visual impairment is ten (10).
- (2) The MCPS shall provide special education for each child with a disability in accordance with the following maximum caseloads for resource classes:
- (a) Emotional-Behavior disability is eight (8);
 - (b) Functional Mental Disability is eight (8);
 - (c) Hearing Impairment is eight (8);
 - (d) Mild Mental Disability is ten (10);
 - (e) Multiple Disabilities is eight (8);
 - (f) Orthopedic Impairment is ten (10);
 - (g) Other Health Impairment is ten (10);
 - (h) Specific Learning Disability is ten (10); and
 - (i) Visual Impairment is eight (8).
- (3) Children with disabilities that meet the definition of Autism; Deaf-Blindness; Developmental Delay for ages six (6), seven (7), and eight (8); and Traumatic Brain Injury shall be served in regular classes, special classes, or resource classes as determined by the ARC.
- (4) If a teacher of exceptional children provides services through the collaborative model, the maximum caseload shall not exceed twenty (20) students with disabilities for secondary, and fifteen (15) students with disabilities for primary.
- (5) Pursuant to KRS 157.360, if caseload for special classes or class size for resource classes exceeds the maximum specified in this section for thirty (30) days, the MCPS shall submit a waiver request to KDE. The waiver request will be prepared by the DoSE on the form provided by KDE.
- (6) The Superintendent, or designee, shall submit the request according to the instructions from KDE.

Section 3: Case Load for Resource Teachers

- (1) Caseloads for resource teachers shall refer to the maximum number of student records a teacher may be assigned.
- (2) The MCPS shall make those assignments based on the following:

- (a) Emotional-behavioral disability is fifteen (15);
 - (b) Functional mental disability is ten (10);
 - (c) Hearing impairment is eight (8);
 - (d) Mild mental disability for primary is fifteen (15) and for secondary is twenty (20);
 - (e) Multiple disabilities is ten (10);
 - (f) Orthopedic impairment is twenty (20);
 - (g) Other health impairment is twenty (20);
 - (h) Specific learning disability for primary is fifteen (15) and for secondary is twenty (20);
 - (i) Visual impairment is ten (10)); and
 - (j) Speech language pathologist caseload limits as contained in KRS 334A.190.
- (3) If caseload for special classes or class size for resource classes exceeds the maximum specified in this section for thirty (30) days, MCPS shall submit a waiver request to the Kentucky Department of Education, pursuant to KRS 157.360.

**CHAPTER VIII
CONFIDENTIALITY OF INFORMATION
707 KAR 1:360**

Refer to MCPS Board of Education Policy 09.14 and Administrative Procedure(s) 09.14 AP.1, 09.14 AP.11, and 09.14 AP.111 for other provisions regarding confidentiality of records for all students.

Section 1: Access Rights

Inspection and Review of Educational Records

- (1) The MCPS permits parents to review and inspect any educational records relating to their child which are collected, maintained, or used by the district. The same access rights apply to the eligible child.
- (2) The MCPS does not prohibit a parent from access to the educational records of their child unless the district is presented with written evidence of a court order relating to such matters as divorce, separation, or custody that specifically revokes the parental rights of record review/access.

Test Protocols and Raw Data

- (1) Copyrighted test protocols and raw data generated by evaluators are educational records according to Family Educational Rights and Privacy Act (FERPA) that are maintained in secure areas in the offices of evaluators, and are not released to others during the evaluation process.
- (2) To the extent that test protocols are integral to understanding the test results or establishing the validity of test results, the test protocols may be shown to and discussed with parents by qualified personnel upon request of parents.
- (3) In order to abide by copyright laws and protect test validity and security, it is not required for a school to provide copies of test protocols to parents as long as access to this information is afforded in this manner.

Private Notes

- (1) Notes or documents in the sole possession of the creator are exempt from parent or eligible student access in accordance with FERPA if the following criteria are met:
 - (a) It is a private note created solely by the individual possessing it,
 - (b) It is a personal memory aid, and
 - (c) Contents are accessible to or revealed to no one except the possessor's temporary substitute.

- (2) If another person, such as a teacher or principal, is knowledgeable of the contents of these notes, then they are subject to review by parents or the eligible student.
- (3) 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.

Access to Educational Records

- (1) If the parent or representative presents a request and all requested records are present and readily available, then the parent or representative is granted immediate access.
- (2) A private place for review and inspection of records shall be provided to parent upon request.
- (3) If the records are not readily available, the principal notifies the parent in writing of a designated time and place for the parent, or designated representative, to review and inspect the educational records of the student.
- (4) The retrieval and access of the student's educational records are provided:
 - (a) Without any unnecessary delay;
 - (b) Within 45 calendar days from the time the principal receives the request;
 - (c) Before any ARC meetings, mediations, due process hearings or dispute resolution meetings; and
 - (d) At a time mutually acceptable to the parent and the principal.

Explanation and Interpretation of Records

- (1) If the parent requests an explanation, as indicated on the request form provided by the MCPS, the principal makes sure that the appropriate staff member (e.g., DoSE, school psychologist, counselor, or special education teacher) is present to explain and interpret the records and answer any questions the parent may have.
- (2) The building principal, or designee, in conjunction with the DoSE shall take steps to obtain translation, or other means, to provide explanations and interpretations to parents in an effective mode of communication in a timely manner.

Copies of Records

- (1) The parent has the right to request the MCPS to 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.

Representative of Parent to Inspect and Review Records

- (1) The parents have the right to have a representative inspect and review the records.

- (2) If the parent authorizes an individual to serve as the parent's representative to inspect and review the records, then the parent completes the Authorization for Release/Inspection of Student Records form provided by the MCPS.
- (3) When the appropriate legal representative of the student signs this release of information form, the MCPS grants the authorized representative access to the educational records of the student.
- (4) If copies of records are provided, a fee may be charged.

Section 2: Record of Access

Documentation Required

- (1) The building principal or designee maintains a Record of Disclosures form in each student's cumulative folder (educational record) as long as the records are maintained.
- (2) The record of access form includes:
 - (a) The name of the person who obtained access to the record;
 - (b) The date the person was given access to the record;
 - (c) The purpose for which the party is authorized to use the records.
- (3) All individuals, except parents, eligible students, and employees of the MCPS with a legitimate educational interest in the records, sign the record of disclosures form immediately prior to inspecting and reviewing the record.

Section 3: Records Containing Information for More Than One Student

- (1) The MCPS provides information from records containing data on more than one student in such a way as to preserve the confidentiality of the other students.
- (2) If a parent requests to review and inspect educational records that have information about more than one student (e.g., attendance rosters, student tracking systems, grade books, etc.), then the person responsible for the maintenance of those records makes certain that any personally identifiable information regarding other students is not disclosed.
- (3) The MCPS ensures that personally identifiable information about any student is not maintained in the educational record of another student.

Section 4: Types and Location of Information

- (1) The Building Principal, or designee, shall provide parents, upon request, a list of the types and location of educational records for students with disabilities collected, maintained and used by the MCPS.
- (2) The list specifies the type of information, (e.g. due process folder, speech folder, psychological/evaluator records), the location (specific school or office) and contact person

where each record is located.

- (3) If requested, the information regarding the records of their child is made available to a parent.

Section 5: Fees

- (1) A fee may be charged to the parent for requests for copies of records, as long as the fee does not effectively prevent the parent from inspecting or reviewing the records.
- (2) A fee is not charged for record search or retrieval.
- (3) Fees are determined by the MCPS Board of Education. See Board Policy 10.11 and Administrative Procedure 01.6 AP.2.

Section 6: Amendment of Records and Opportunity for Hearing

- (1) A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 is inaccurate, misleading, or violates the privacy or other rights of the student may request the MCPS to amend the information.
- (2) Once a request is made by a parent for an amendment to be made to the student's record, the MCPS shall respond within ten (10) school days.
- (3) 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.

Section 7: Consent

Written Parental Consent

- (1) Except as to disclosures to appropriate law enforcement agencies (see Chapter 7, Procedural Safeguards and State Complaints), 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 requirements under 707 KAR Chapter 1.

Disclosure Without Consent

- (1) The MCPS discloses personally identifiable information from the educational records without the written consent of the parent, if the disclosure is in accordance with FERPA, § 99.31 and KRS 160.720.
- (2) For the Confidentiality Chapter of these procedures, participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or

from which information is obtained, under Part B of the Act (IDEA).

(3) Educational institutions shall not permit the release or disclosure of records, reports, or identifiable information on students to third parties other than directory information as defined in KRS 160.600, without parent or eligible student consent except to:

- (a) Other school officials, including teachers, with legitimate educational interests and purposes.
- (b) Other school systems, colleges and universities to which the student has sought enrollment or transfer or from which the student was graduated;
- (c) Federal, state, or local officials who carry out a lawful function and who are authorized to receive this information pursuant to statute or regulation. This authority includes requests from any agency of the federal or state government for the purposes of determining a student's eligibility for military service;
- (d) Federal, state, or local officials to whom the information is required to be disclosed. (e.g. to comply with a judicial order or lawfully issued subpoena, student abuse investigation, etc);
- (e) Individuals or organizations conducting legitimate studies, surveys, and data collection in such a manner so as not to permit personal identification of parents or students;
- (f) Accrediting organizations enlisted to carry out accrediting functions; or
- (g) Parents of a dependent student as defined in Section 152 of the Internal Revenue Code of 1954 (26 U.S.C. sec 152) (KRS 160.72).

Consent for Transition Services

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

Release of Education Records to Another School District

(1) Requests for records of a child with a disability from another school district may be accepted in writing, by facsimile, or phone.

(2) Parental consent to release records is not required.

(3) Upon receipt of this request from the receiving district, the principal or designee provides a copy of the following special education records:

- (a) The current IEP, including all progress monitoring data and progress reports;
- (b) Conference summaries that pertain to the current IEP;
- (c) Parent consent to conduct evaluations and provide special education services;

- (d) The initial evaluation and the most recent reevaluation; and
 - (e) The parent's consent to bill for Medicaid services, if applicable to the child.
- (4) The original of all special education records is then placed in an inactive file in the office of the DoSE.
- (5) Original copies of special education records may be sent to another school within the MCPS district.

Emergency Disclosures Without Consent

- (1) The MCPS 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 child or other individuals. (§ 99.36 (a), FERPA)
- (2) In determining whether or not an emergency exists which would warrant the disclosure of educational records, the building principal considers the following factors:
- (a) The seriousness of the threat to the health or safety of the child or other individuals;
 - (b) Whether the information is needed in order to take action during the emergency;
 - (c) Whether the individuals to whom the information is disclosed are in a position to act during the emergency; and
 - (d) The extent to which time is of the essence in dealing with the emergency.
- (3) Upon determination by the building principal or designee that the situation at hand 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.

Other Conditions for Release of Personally Identifiable Information

- (1) The MCPS 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.
- (2) The MCPS shall inform a party to whom disclosure is made of the requirements of this section. (§ 99.33 FERPA)
- (3) Prior to re-disclosing any information in an education record that was obtained from another source, the MCPS Representative contacts the parent or eligible student in order to obtain the parent or eligible student's written consent for re-disclosure.
- (4) The parent or eligible student completes the Authorization for Release/Inspection of Student Records form prior to the re-disclosure of any information.

Parent Refusal to Release Information

- (1) If a parent refuses to give consent for the disclosure of educational records needed to provide a free appropriate public education, and the MCPS disagrees with the parent's refusal for disclosure, then the MCPS may request a due process hearing, pursuant to 707 KAR 1:340 or comply with FERPA.

Section 8: Safeguards

Persons Responsible for Ensuring Confidentiality

- (1) The MCPS shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.
- (2) The Director of Pupil Personnel (DPP) is responsible for ensuring the confidentiality of any personally identifiable student information, which includes special education records.
- (3) The DoSE is responsible for the general supervision of all educational records related to students with disabilities.
- (4) The building principal has responsibility for all records maintained at the building level even though teachers may have custody of the records.

Training Regarding Confidentiality Issues

- (1) The MCPS Representative will make arrangements for persons collecting or using personally identifiable information to receive training regarding the MCPS policies and procedures for ensuring confidentiality prior to those persons having access to educational records.
- (2) When new staff is employed later in the school year, it is the responsibility of the individual's immediate supervisor to provide training in confidentiality issues for the new employee.

Listing of Persons Who May Have Access

- (1) The MCPS shall maintain, for public inspection, a current listing of the names and positions of employees within the MCPS who may have access to personally identifiable student information.
- (2) This may be accomplished by providing listings of all certified staff, paraprofessionals, school board members, board attorney, special education cooperative staff, contracted staff, etc.

- (3) It must be recognized that any specific individual would not have access to all student records, but only those for whom a legitimate educational interest can be determined.

Section 9: Destruction of Records

- (1) Destruction means physical destruction or removal of personal identifiers from information so the information is no longer personally identifiable.
- (2) The MCPS 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 student.
- (3) The information shall be destroyed at the request of a parent, subject to the following:
 - (a) Discussion with the DoSE or designee,
 - (b) The MCPS destroys records only in accordance with the law and as specified in the Kentucky Records Retention Schedule.
- (4) However, a permanent record of a student's name, address, and phone number, his grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitations.
- (5) The parent may be informed by one or more of the following methods:
 - (a) Notice and consent via signature on the MCPS Destruction of Records Form;
 - (b) Notice via a letter indicating intent to destroy records mailed to the last known address; or
 - (c) Notice published in the local newspaper indicating a range of records to be destroyed.

Section 10: Student's Rights

- (1) The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the student at the age of eighteen (18), unless the student has been declared incompetent under KRS Chapter 387 in a court of law.
- (2) At least one year before a student's eighteenth (18th) birthday, the MCPS Representative provides notice to the parent that the rights regarding review, inspection, and disclosure of records will transfer to the student at the age of eighteen (18) unless the parent provides the MCPS with evidence that there is a court order showing the parent as the guardian of or a student's representative in educational matters.
- (3) This notification is documented on the appropriate due process form.

- (4) The MCPS does not disclose educational records of a student over the age of eighteen (18) to the parent without:
- (a) The student's written consent;
 - (b) A court order; or
 - (c) Proof that the student is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954. (§ 99.31(a)(8) FERPA).

**CHAPTER IX
CHILDREN WITH DISABILITIES ENROLLED IN PRIVATE SCHOOLS
707 KAR 1:370**

Section 1: Children with Disabilities Enrolled in Private Schools by Their Parents when FAPE is at Issue

- (1) The MCPS shall make FAPE available to each child with a disability.
- (2) If a parent decides to place his child with a disability in a private school after the offer of FAPE, the MCPS shall not be required to pay for the cost of the private education.
- (3) Disagreements between a parent and the MCPS regarding the availability of a program appropriate for the child and financial responsibility shall be subject to the due process procedures in 707 KAR 1 :340.
- (4) If a parent of a child with a disability, who previously received special education and related services under the authority of the MCPS, enrolls the child in a private school without the consent of or referral by the MCPS, a hearing officer or a court may award financial reimbursement to the parent if it is determined the MCPS did not offer FAPE to the child in a timely manner and the private placement is appropriate.
- (5) This may be awarded even if the parents did not receive consent from the MCPS for the private placement and the MCPS did not make a referral to the private school.
- (6) A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to the MCPS.
- (7) The amount of the financial reimbursement described in subsection (2) of this section may be reduced or denied if:
 - (a) At the most recent ARC meeting prior to the removal by the parents of their child with a disability from the public school, the parents did not inform the MCPS that they were rejecting the proposed MCPS placement, including stating their concerns and their intent to enroll the child in a private school at public expense; or
 - (b) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the MCPS of the information described in paragraph (a) of this subsection;
 - (c) Prior to the parent's removal of the child, the MCPS 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.

- (8) The amount of financial reimbursement shall not be reduced or denied for failure to provide the notice described above if:
- (a) The parent is illiterate;
 - (b) Compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
 - (c) The school prevented the parent from providing the notice; or
 - (d) The parent had not received notice from the MCPS of his obligation to provide this notice.
- (9) The MCPS provides notice of the parents' responsibilities to give notice to the MCPS prior to removal of the child from the MCPS to private school through its Parents Procedural Safeguards (Parent's Rights) document provided to parents in accordance with the Procedural Safeguards and State Complaint Procedures Chapter of these procedures

Section 2: Child Find for Children with Disabilities Enrolled by Their Parents in Private Schools

- (1) The MCPS shall locate, identify, and evaluate all private school children with disabilities, including school children attending private, religious schools within the boundaries of the MCPS.
- (2) These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools.
- (3) 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 its child find activities.
- (4) The MCPS 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.
- (5) The MCPS shall consult with appropriate representatives of the private schools on how to carry out these activities.

Child Find Design

- (1) The child find process must be designed to ensure:
- (a) The equitable participation of parentally-placed private school children; and
 - (b) An accurate count of those children.
- (2) Child find activities shall be completed in a time period comparable to that for students attending public school in the MCPS.

- (3) The MCPS shall not consider the costs, including the cost of individual evaluations, incurred by its child find activities in meeting its obligation under Section 4 (3) of 707 KAR 1:370.
- (4) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released from officials in the LEA where the private school is located to officials in the LEA of the parent's residence.

Section 3: Parental Consent

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

Section 4: Basic Requirements

- (1) The MCPS shall provide special education and related services to parentally placed private school children with disabilities in accordance with the procedure found in Section 5 of 707 KAR 1:370, to the extent consistent with the number and location of these children enrolled in private schools located within the school district boundaries.
- (2) A service plan shall be developed and implemented for each private school child with a disability who has been designated by the MCPS to receive special education and related services under Section 5 of 707 KAR 1:370.
- (3) To meet this requirement, the MCPS shall spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 CFR 300.133.
- (4) This amount shall be determined after the MCPS has completed its child find activities and submitted a student count figure to KDE. This student count shall be conducted on December 1st of each year.

Section 5: Consultation

- (1) 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 children with disabilities; and
 - iii) How and when those decisions will be made; and
 - iv) How the MCPS 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 MCPS disagrees with the views of the private school representatives.
- (2) When timely and meaningful consultation has occurred, the MCPS DoSE shall obtain a written affirmation signed by the representatives of the private schools.
- (3) If a private school does not provide the affirmation within a reasonable period of time, the MCPS shall forward the documentation of the consultation process to the KDE.

Section 6: Services Provided

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

- (2) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- (3) There shall be no individual right to special education and related services, but the child shall receive the services provided in the service plan in light of the services the MCPS has determined to provide.
- (4) A private school child with a disability who has been designated to receive services shall have a services plan that describes the specific special education or related services the MCPS will provide in light of the services the MCPS has determined to provide private school children with disabilities through the process in 707 KAR 1:370, Section 5.
- (5) 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 the IEP.
- (6) The MCPS shall ensure that a representative of the private school attends each ARC meeting.
- (7) If the representative cannot attend, the appropriate MCPS Representative shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
- (8) Services delivered through a service plan shall be provided by:
 - (a) Employees of the MCPS; or
 - (b) Through a contract with the MCPS.
- (9) Special education and related services provided through a service plan shall be secular, neutral, and non-ideological.

Section 7: Location of Services

- (1) A service to a private school child with a disability may be provided at a site determined by the MCPS and not otherwise prohibited by law.
- (2) 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.
- (3) The MCPS is not required to provide transportation from the child's home to the private school.

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

Section 8: Due Process Procedures

- (1) The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340, Sections 4, 6, 8, 9, 10, 11, 12 shall not apply to complaints that the MCPS failed to meet the requirements of 707 KAR 1:370, including the provision of services indicated on a services plan.
- (2) However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340, Section A.
- (3) Private school official has the right to submit a state written complaint to the MCPS and KDE as outlined in 707 KAR 1:340, Section 7, for allegations that the MCPS:
 - (a) Did not engage in timely and meaningful consultation; or
 - (b) Did not give due consideration to the views of the private school official.
- (4) If the private school official submits a state written complaint, the official shall provide the basis of the alleged noncompliance by the MCPS.
- (5) If the private school official is dissatisfied with the final decision of KDE, the official may submit a complaint to the Secretary of the United States Department of Education.
- (6) If such a complaint is filed with the secretary, the KDE shall forward the appropriate documentation to the Secretary.
- (7) The due process procedures described in 707 KAR 1:340 shall apply to complaints that the MCPS failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

Section 9: Restrictions on Serving Non-Public Students

- (1) The MCPS 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.
- (2) The MCPS 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.
- (3) The MCPS 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.
- (4) The MCPS 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 MCPS.

- (5) The MCPS shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the MCPS acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities.
- (6) The MCPS may place equipment and supplies in a private school for the period of time needed to provide the services.
- (7) The MCPS 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.
- (8) The MCPS 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.
- (9) The MCPS shall not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities.
- (10) The DoSE shall monitor the use of Part B funds used to provide services to private school students to provide for legal compliance in the use of such funds.

APPENDIX

EXCERPTS FROM 707 KAR 1:340. PROCEDURAL SAFEGUARDS AND STATE COMPLAINT PROCEDURES

Section 7: State Complaint Procedures

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

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

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

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

1. A proposal to resolve the complaint; and

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

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

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

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

(3) The complaint shall include:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Technical assistance activities;

(b) Negotiations; or

(c) Corrective actions.

Section 8: Right to Mediation and Due Process Hearings

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

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

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

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

Section 9: Mediation Rights

1) The mediation process, if chosen, shall:

(a) Be voluntary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10: Dispute Resolution

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

(2) The purpose of this meeting is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11: Hearing Rights

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

(a) The name of the student;

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

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

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

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

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

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

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

Section 12: Appeal of Decision

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

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

(3) Except as provided in Sections 14 and 15 of this administrative regulation, during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the student involved in the hearing or appeal shall remain in the student's current educational placement, unless the LEA and the parent agree to another placement. However, the student shall not be required to remain in the student's current educational placement if the complaint involves an application for initial services for a student who is transitioning from the early intervention program into preschool and the student is no longer eligible for the early intervention program due to age. In that case the LEA shall not be required to provide the early intervention services the student had been receiving but would be required to provide any special education and related services that the student is eligible for and that are not in dispute between the parent and the LEA.

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