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DEFINITIONS

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

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

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

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

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

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

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

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that

adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional-behavior disability.

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

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

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

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

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

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

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

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

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

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

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

"Compliance" means the obligations of state or federal requirements are met.

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

"Consent" means:

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

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

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

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

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

"Day" means calendar day unless otherwise indicated as business day or school day.

"Deaf-Blindness" means concomitant hearing and visual impairments that have an

adverse affect on the child's education performance, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness, unless supplementary assistance is provided to address educational needs resulting from the two disabilities.

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

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

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

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

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

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

1. severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;
2. severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;

3. a general pervasive mood of unhappiness or depression; or
4. a tendency to develop physical symptoms or fears associated with personal or school problems.

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

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

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

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

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

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

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

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

"Graduates" means a child completes the established program of study leading to the receipt of a diploma and leaves the school system. The Board of Education grants a youth with a disability a diploma who has met the State Board of Education criteria standards. Each youth with a disability who completes the secondary program is given the opportunity to participate in graduation ceremonies with peers who are not disabled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;
2. in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or

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

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

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

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

1. is due to a chronic or acute health problem such as acquired immune deficiency syndrome, asthma, attention deficit disorder, or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, or tuberculosis; and
2. adversely affects a child's educational performance.

"Parent" means:

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

"Participating agency" means:

1. (for educational records) any agency or institution that collects, maintains, or

uses personally identifiable information or from which information is obtained, under Part B of the Act.

2. (for transition services) a state or local agency that is financially and legally responsible for providing transition services to a child with a disability.

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

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

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

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

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

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

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

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

"Related services" means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy,

recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school health services and school nurse services, social work services in school, and parent counseling and training. "Related services" do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device. The definition of "related services" does not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Tests" include individual and group measures of ability or aptitude, performance-

based assessments, norm-referenced or criterion-referenced achievement measures (national, state, or local), adaptive behavior scales, measures of motor function, speech and language, and other tests.

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

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

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

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

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

"Travel training" means instruction to children with significant cognitive disabilities and

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

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

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

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

(c) meets the following:

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

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

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

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

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

"Withholding" means no further payment of specified funds is made to an approved recipient.

FREE APPROPRIATE PUBLIC EDUCATION

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

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

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

SCPS ensures a free appropriate public education is available to each child with a disability:

1. whose age is three (3) to twenty-one (21) years;
2. who resides in a home, facility, residence, or any type of shelter within SCPS geographical boundaries;
3. who has a disability, regardless of the severity (according to procedures for **EVALUATION** and **ELIGIBILITY**);
4. who needs special education and related services (according to procedures for **IEP**);
5. who has been suspended or expelled for more than a total of ten days in a school year (according to **PROVIDING SERVICES** in procedures for **DISCIPLINE**) ; and
6. who resides within SCPS boundaries who has not graduated with a general education diploma or certificate of completion (according to **Release Due to Withdrawal From School** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**).

Standards For Determining FAPE

FAPE shall be provided to each child with a disability even though the child has not failed or been retained in a course and is advancing from grade to grade based on the child's unique needs and not on the child's disability.

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

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

Services for students with disabilities include:

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

FAPE is provided through an IEP that serves as a program of reasonably designed strategies and services to meet the individual needs of a student with a disability in the general education curriculum. All decisions of the Admissions and Release Committee (ARC) relate to the specific student and not the commonly anticipated educational needs of most students who have the same disability or categorical label.

FAPE Not Required

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

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

No Cost to Parents

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

707 KAR 1:280 Section 1 (27)
34 CFR 300.17

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

707 KAR 1:280 Section 1 (48)

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

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

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

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

Proper Functioning Of Hearing Aids

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

707 KAR 1:290 Section 3
34 CFR 300.113

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

Prohibition of Mandatory Medication

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

707 KAR 1:290 Section 9
34 CFR 300.174

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

SCPS staff work with parents and/or guardians to provide information regarding the student's performance, according to procedures for **EVALUATION**.

CHILD FIND

CHILD FIND SYSTEM

(1) An LEA shall have in effect procedures that plan and implement a child find system to locate, identify, and evaluate each child:
(a) whose age is three (3) to twenty one (21);
(b) who resides in a home, facility, or residence within the LEA's geographical boundaries, including children with disabilities who attend private schools located within the LEA boundaries, children who are highly mobile such as migrant and homeless children as described in 704 KAR 7:090, children who are wards of the state or are in state custody, and students who are advancing grade to grade resulting from passing a grade but who still may have a disability;
(c) who is either in or out of school;
(d) who may need special education and related services;
(2) for preschool age children with disabilities, a LEA must ensure a smooth and effective transition from the early intervention program to preschool; and
(3) each LEA shall participate in transition planning conferences for children with disabilities served by early intervention programs.

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

Spencer County Public Schools (SCPS) makes a systematic effort to identify all children who may have a disability and need special education and related services. The Child Find system includes activities to locate, identify, and evaluate each child who:

1. is three (3) to twenty-one (21) years of age;
2. is out-of-school or in-school;
3. attends a private school in the district;
4. is highly mobile such as migrant and homeless children (see **CHILD FIND RESOURCES**, 704 KAR 7:090 Homeless Children Education Program);
5. who may need special education and related services;
6. are wards of the state or are in state custody;
7. is advancing from grade to grade resulting from passing a grade but who still may have a disability; and
8. need transition planning conferences to ensure a smooth and effective transition from the early intervention program to preschool (see **Preschool Transition** procedures in **IEP**).

Child Find Activities in Private Schools

(1) An LEA shall locate, identify, and evaluate all private school children with disabilities, including school children attending private, religious schools within the boundaries of the LEA. These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA in which private schools are located shall include parentally-placed private school children who attend those schools but reside in a state other than Kentucky in the LEA's child find activities.
(3) An LEA shall consult with appropriate representatives of the private schools on how to carry out these activities.
(4) Child find activities shall be completed in a time period comparable to that for other students attending public school in the LEA. An LEA shall not consider the costs, including the cost of individual evaluations incurred by the LEA's child find activities, in meeting its obligation under 707 KAR 1:370 Section 4 (3).

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

If, through Child Find activities, SCPS locates a child who is parentally placed in a private school in SCPS, SCPS staff can not disclose information to the school of residence without obtaining written parental consent (see **Release of Education Records to another Public School District** in **CONFIDENTIALITY** procedures).

SCPS Child Find System is:

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

LOCATION ACTIVITIES

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

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

Public Notice

> (a) The SEA must give notice that is adequate to fully inform parents about the requirements of Sec. 300.123 including:
> (1) a description of the extent that the notice is given in the native languages of the various population groups in the state;
> (2) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
> (3) a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
> (4) a description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. part 99.
> (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.
>
> 34 CFR 300.612

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

and Privacy Act (FERPA) notice. (See **CHILD FIND RESOURCES**, Public Notice.)

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

The public notice includes:

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

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

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

Annually, the DoSE obtains information about families residing in SCPS boundaries who are non-English speaking. If a need to interpret or publish the notice in a language other than English is identified, the notice is interpreted, or translated and published in the other language. If someone cannot be identified to appropriately translate the notice (e.g., by checking the KDE web site for a translation; by contacting surrounding colleges and universities, etc.), the district contacts KDE, in writing, for assistance in securing the necessary interpretation or translation.

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

Training and Awareness

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

The DoSE or designee trains or updates SCPS administrative personnel about procedures for due process, confidentiality, and referral of children who may have

disabilities and need special education and related services. Principals or their designees provide training for their respective staffs within 30 calendar days of the start of school (see also **Confidentiality Training** in procedures for **CONFIDENTIALITY**). Each September, the DoSE sends Child Find posters to each school building.

CHILD TRACKING SYSTEM

> An LEA shall have in effect policies and procedures that plan and implement a child find system to locate, identify, and evaluate each child.
>
> 707 KAR 1:300 Section 1
> 34 CFR 300.111 (a) (1) (ii)

> Child Find for Children with Disabilities Enrolled by their Parents in Private School.
> (2) The LEA shall maintain in its records and provide to KDE:
> (a) the number of children evaluated under this section;
> (b) the number of children determined to be children with disabilities under this section; and
> (c) the number of children served under this section.
>
> 707 KAR 1:370 Section 2 (2)
> 34 CFR 300.131 (a) & (b)

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

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

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

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

1. SCPS schools,
2. private schools,
3. parochial schools,
4. Head Start,
5. state operated schools,
6. hospitals or other treatment facilities,
7. Cabinet for Families and Children programs,
8. Department of Juvenile Justice programs,
9. Correctional facilities, and
10. home schools.

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

The DoSE makes sure that all child tracking data are collected and stored and SCPS staff who have access to child tracking data are trained according to **Confidentiality Training** in procedures for **CONFIDENTIALITY.**

PROCEDURAL SAFEGUARDS

TIMELINES

An LEA shall ensure that within sixty (60) school days following the receipt of the parental consent for an initial evaluation of a child:
(a) the child is evaluated, and
(b) if the child is eligible, specially designed instruction and related services will be provided in accordance with the IEP.

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

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

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

Spencer County Public Schools (SCPS) ensures that after the receipt of initial parental consent for evaluation services, the referred child is evaluated. If the child is determined eligible by an ARC, an IEP is developed and implemented. The evaluation, IEP development, and initial implementation take place within 60 school days of the receipt of parental consent for evaluation.

Exception to the Timelines

The sixty (60) school-day timeline shall not apply in the following situations:
(a) if the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, a long as the new LEA is making sufficient progress to complete the evaluation and the parent and the LEA agree to a specific time when the evaluation shall be completed; or
(b) if the parent repeatedly fails or refuses to produce the child for evaluation.

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

Upon receiving the records of a student who is transferring to SCPS during the evaluation process, SCPS staff reviews the record and contacts the previous district to coordinate the completion of the evaluation. SCPS staff reviews the status of the child's evaluation and determines if the sixty (60) school day timeline can be met. SCPS staff discuss with the parent the progress of the child in the evaluation process and work together to agree on the timeline for completion of the evaluation.

SCPS staff follow **Transmittal of Educational Records for Transfer Students** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**. (See also procedures for **Students Who Transfer During the Evaluation Process** in **EVALUATION** procedures**.)**

ARC MEMBERSHIP

SCPS establishes an Admission and Release Committee (ARC) with appropriate membership to address the process of identification, evaluation, placement of students, and the provision of a free appropriate public education for students with disabilities.

> An LEA shall ensure that the ARC for each child with a disability includes:
> a. the parents of the child;
> b. not less than one (1) regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general education curriculum for same aged peers;
> c. not less than one (1) special education teacher of the child or a special education teacher who has knowledge of the disability or suspected disability, or, if appropriate, at least one special education provider of the child;
> d. a representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum and the availability of the resources of the LEA;
> e. an individual who can interpret the instructional implications of evaluation results, who may also be a member of the team described in 707 KAR 1:320 Section 3 (1) (b-d);
> f. an individual who has knowledge or special expertise regarding the child, at the discretion of the parent or the LEA;
> g. related services personnel, as appropriate; and
> h. the child, if appropriate.
>
> 707 KAR 1:320 Section 3 (1)
> 34 CFR 300.321 (a)

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

Parent Participation in the ARC

> The LEA shall ensure that the ARC for each child with a disability includes the parents of the child.
>
> 707 KAR 1:320 Section 3 (1) (a)
> 34 CFR 300.321 (a) (1)

> A parent of a child with a disability shall be afforded an opportunity to :
> (a) inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and
> (b) participate in all ARC meetings concerning his child.
>
> 707 KAR 1:340 Section 1 (1)
> 34 CFR 300.501 (a)

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

The parents participate by:

1. providing information about the child, including information about the child

outside the school setting;
2. providing input for development of the IEP;
3. giving written permission for evaluation, initial placement, and reevaluation; and
4. providing support for implementation of the IEP.

ARC Chairperson Responsibility

> The LEA shall ensure that the ARC for each child with a disability includes a representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, and is knowledgeable about the general curriculum and the availability of the resources of the LEA.
>
> 707 KAR 1:320 Section 3 (1) (d)
> 34 CFR 300.321 (a) (4)

The principal or primary administrator at the building level is the assigned SCPS representative who is knowledgeable about the general education curriculum, qualified to supervise the provision of specially designed instruction, and able to commit personnel and fiscal resources for implementation of the IEP. The principal is responsible for the implementation of the ARC process in the school building. The principal ensures that all SCPS procedures are followed and services described in the IEP are provided at that school.

The ARC Chairperson ensures:
1. due process and procedural safeguards are followed;
2. the student representative is determined;
3. appropriative committee composition as documented by signatures on Conference Summary;
4. facilitation of group decision making, and if necessary makes a determination of the SCPS position when the ARC cannot agree;
5. receipt of written referrals for the ARC to review and analyze to determine if sufficient information is available for initiating a full and individual evaluation;
6. support for and implementation of ARC and IEP decisions;
7. communication with parents, notifying them of all ARC meetings;
8. information is obtained and disseminated to appropriate personnel;
9. notice of ARC meetings and contact to parents about the child's invitation to the meeting;
10. a Conference Summary recorder is designated;
11. records of conference proceedings are maintained; and
12. communication with all IEP implementers, ensuring that the IEP is accessible and they are informed regarding their specific responsibilities in implementation of the IEP.

The ARC Chairperson may designate other school staff committee members to assist in the implementation of these committee functions or procedures.

ARC Designee

If the building principal wishes to designate another individual to serve as ARC Chairperson, the principal sends a memorandum to the DoSE identifying the designee

and specifying the qualifications of the individual to serve as ARC Chairperson.

The DoSE reviews the names of the proposed designee(s), and determines appropriate qualifications based on the following characteristics:

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

The DoSE sends the approved names of appropriate designees to the Superintendent. The Superintendent obtains SCPS Board of Education approval and the designation is recorded in the Board minutes. The DoSE maintains a copy of the written approval. The DoSE makes sure that Board approval and training for the designee(s) occur before the designee serves in any capacity as the ARC Chairperson.

(See **PROCEDURAL SAFEGUARDS RESOURCES**, KDE memo, August 4, 1993, Persons Qualified to Serve as LEA Representatives at ARC Meetings.)

Special Education Teacher Determination and Responsibilities

The LEA shall ensure that the ARC for each child with a disability includes at least one special education teacher of the child, or, if appropriate, at least one special education provider of the child. 707 KAR 1:320 Section 3 (1) (c) 34 CFR 300.344 (a) (3)

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

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

The Special Education Teacher:

1. assists in maintaining records of meeting procedures;
2. assists in conducting necessary evaluations of referred child;
3. assists the committee in determining eligibility of child for a program for exceptional children;
4. brings to the meeting statements of levels of educational performance, proposed goals, objectives/benchmarks, and specially designed instruction for the child;
5. facilitates the development of the IEP;
6. ensures the implementation of the IEP of children included on his/her caseload including the compilation of written documentation of child's progress and accomplishment of goals, objectives/benchmarks;
7. assists in communication with all IEP implementers, ensuring that the IEP is

accessible and they are informed regarding their specific responsibilities in implementation of the IEP; and

8. summarizes and reviews the child's progress and facilitates the revision of the IEP at the annual review meeting.

Regular Education Teacher

> The LEA shall ensure that the ARC for each child with a disability includes not less than one (1) regular education teacher of the child (if the child is or may be participating in the regular education environment) to provide information about the general education curriculum for same aged peers.
>
> 707 KAR 1:320 Section 3 (1) (b)
> 34 CFR 300.321 (a) (2)

> A regular education teacher of the child, as a member of the ARC, shall, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate:
> (a) positive behavioral interventions and strategies for the child;
> (b) supplementary aids and services; and
> (c) program modifications or supports for school personnel that will be provided for the child.
>
> 707 KAR 1:320 Section 5 (5)
> 34 CFR 300.324 (a) (3)

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

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

The regular education teacher is a member of the ARC if the child is, or may be, participating in the regular education environment. In circumstances where instruction is provided by more than one regular education teacher, SCPS requires only one teacher to attend the ARC meeting. The regular education teacher who serves as a member of the ARC should be the teacher who is, or may be, responsible for implementing a portion of the IEP. If the child has more than one regular education teacher responsible for implementing a portion of the IEP, the ARC Chairperson may designate which teacher or teachers will serve, taking into account the best interest of the child. Although not all the child's teachers may attend the ARC, the ARC Chairperson ensures each teacher is informed about the IEP prior to implementation.

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

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

The Referring Teacher/Regular Education Teacher:

1. submits written referral to ARC Chairperson;
2. designs, implements, and documents results of interventions and strategies in the regular education setting designed to address student problems;
3. assists in the determination of positive behavioral interventions and strategies for the child;
4. brings to the meeting statements of levels of educational performance as related to the Program of Studies and Core Content for Assessment;
5. assists in the development of the IEP, including determination of supplementary aids and services, program modifications or supports for school personnel to be provided for the child;
6. implements the IEP as appropriate; and
7. provides input on child's progress (maintaining monitoring data if appropriate) and the development and revision of the IEP.

Person who can Interpret Instructional Implications of Evaluation

> The LEA shall ensure that the ARC for each child with a disability includes an individual who can interpret the instructional implications of evaluation results, who may be a member of the team.
>
> 707 KAR 1:320 Section 3 (1) (e)
> 34 CFR 300.321 (a) (5)

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

The person who can interpret evaluation:

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

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

> If the purpose of the ARC is to determine eligibility for a child suspected of having a specific learning disability, the ARC shall also include the personnel listed in 707 KAR 1:310 Section 2 (1), in addition to the personnel listed in 707 KAR 1:320 Section 3.
>
> 707 KAR 1:320 Section 3 (5)
> 34 CFR 300.308 (b)

> The determination of whether a child suspected of having a specific learning disability is a child with a disability and whether the specific learning disability adversely affects educational performance shall be made by the child's ARC. The ARC shall also include other professionals, relative to the area(s) of concern, such as a school psychologist, speech-language pathologist, or educational specialist.
>
> 707 KAR 1:310 Section 2 (1)
> 34 CFR 300.308 (b)

If a child is being assessed for a Specific Learning Disability, the ARC includes other

professionals relative to the area(s) of concern. This may include a school psychologist, speech-language pathologist, or educational specialist.

Related Services Personnel

> The LEA shall ensure that the ARC for each child with a disability includes related services personnel, as appropriate;
>
> 707 KAR 1:320 Section 3 (1) (g)
> 34 CFR 300.321 (a) (6)

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

If the child's evaluation indicates the need for a specific related service, or a child has been receiving a related service, the ARC Chairperson ensures that a qualified provider of that service attends the ARC meeting, or provides a written recommendation (see procedures for **Excusal From ARC Meetings** in **EVALUATION** procedures) concerning service to be provided as related to goals, benchmarks/objectives, and specially designed instruction according to **DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM** in procedures for **IEP**.

Child with a Disability

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

The ARC Chairperson invites a child who is emancipated child (see **DEFINITIONS**) to their ARC meeting. A child with a disability may attend the ARC if appropriate. Generally, a child with a disability attends the ARC meeting if the parent decides that it is appropriate for the child to do so. If possible, the ARC Chairperson and parents discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance would be helpful in developing the IEP, directly beneficial to the child, or both. SCPS informs the parent before each IEP meeting that they may invite their child to participate

<u>Child Age Fourteen (14) or Older</u>

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

The ARC Chairperson invites the youth who is in the eighth (8th) grade, or who is fourteen (14) years of age or older to participate in the ARC meeting if a purpose of the meeting is the consideration of transition service needs. The invitation to the parent shall indicate that the child is invited and that one of the purposes of the meeting is the

planning of transition services.

> For a child with a disability, beginning no later than the IEP that will be in effect when the child turns sixteen (16), the invitation shall state that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the child and shall include the identify of any other agency that is invited to send a representative. This shall apply to a child younger that sixteen (16) year of age if determined to be appropriate by the ARC.
>
> 707 KAR 1:320 Section 4 (4)
> 34 CFR 300.321 (b) (2)

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

If a child elects not to attend the ARC meeting where post-school transition services are discussed, the child's teacher takes steps to ensure that the youth's preferences and interests are considered. This information may be gained from an interview with the student and from vocational assessments completed on the student according to Age Appropriate Assessments for Transition Purposes in procedures for **IEP**.

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

> When a child with a disability reaches the age of majority (age eighteen), all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law.
>
> 707 KAR 1:340 Section 9 (6)
> 707 KAR 1:360 Section 10
> 34 CFR 300.320 (c)

In the case of a student who is age 18 or older (see **RIGHTS OF THE ELIGIBLE STUDENT** in procedures for **CONFIDENTIALITY**) the ARC Chairperson sends the notices of ARC directly to the student.

Other Individuals Knowledgeable about the Child at Discretion of Parent or SCPS

> The LEA shall ensure that the ARC for each child with a disability includes an individual who has knowledge or special expertise regarding the child at the discretion of the parent or the LEA.
>
> 707 KAR 1:320 Section 3 (1) (f)
> 34 CFR 300.344 (6)

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

Agency Representatives Involved in Transition Planning

> A public agency that is likely to be responsible for providing or paying for transition services shall also be invited to the extent appropriate and with the consent of the parent or the child, if the child is an

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

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

Agency representatives:

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

Consent for Release of Information for Transition Services

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

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

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

Early Childhood Transition Planning

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

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

The ARC Chairperson invites the child's previous early intervention program provider to participate in the ARC meeting if a purpose of the meeting is the transition from early intervention services to preschool. The invitation to the parent shall indicate that the child is invited and that one of the purposes of the meeting is the planning of transition services. See also **Preschool Transition** in procedures for **IEP**.

EXCUSAL FROM ARC MEETINGS

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

707 KAR 1:320 Section 3 (2)

34 CFR 300.321 (e) (1)

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

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

Prior to the ARC meeting, the ARC Chairperson selects the appropriate members to invite as related to the purpose of the meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to attend the ARC Meeting.

If a member of the ARC can not attend the meeting, or the attendance of the member is not necessary for the purpose of the ARC, the committee member may be excused from the ARC meeting (see the Excusal Form in **PROCEDURAL SAFEGUARDS RESOURCES**) if:
a) the parent(s) and SCPS mutually agree;
b) the decision is documented in writing; and
c) the determination is made prior to the ARC meeting.

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

NOTICE OF ARC MEETINGS

Written Notice of ARC Meetings

An LEA shall ensure that one or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Except for meeting concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before an ARC meeting. The meeting shall be scheduled at a mutually agreed upon time and place.
An LEA shall send an ARC meeting invitation to the parents which includes:
(a) the purpose;
(b) time;
(c) location of the meeting;
(d) who will be in attendance;
(e) notice that the parents may invite people with knowledge or special expertise of the child to the meeting; and
(f) notice that the LEA will invite representatives from the early intervention program to the initial meeting, if the parents request it.

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

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

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

SCPS Board policy states that the SCPS Board attorney shall attend an ARC meeting if a parent brings an attorney to represent their child. The ARC Chairperson informs the parent and their attorney that SCPS is represented by legal counsel in this matter, and gives them the name of the Board attorney and the name of the firm. This prohibits the parent's attorney from direct contact with staff, without the Board attorney present.

Content of ARC Notice

> If the child is in the eighth grade year, or has reached the age of fourteen (14) years, the invitation shall state that a purpose of the meeting will be the development of a statement for the need for transition services for the child and state that the child is invited. This applies to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.
>
> 707 KAR 1:320 Section 4 (3)
> 34 CFR 300.321 (b) (1)

> For a child with a disability, beginning no later than the IEP that will be in effect when the child turns sixteen (16), the invitation shall state that a purpose of the meeting is the consideration of the postsecondary goals and needed transition services for the child and shall include the identify of any other agency that is invited to send a representative. This shall apply to a child younger that sixteen (16) year of age if determined to be appropriate by the ARC.
>
> 707 KAR 1:320 Section 4 (4)
> 34 CFR 300.321 (b) (2)

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

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

> An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.
>
> 707 KAR 1:340 Section 3 (2)
> 34 CFR 300.503 (a)

On the date the decision is made to pursue a disciplinary change of placement, the ARC Chairperson sends the parent a notice of the proposed disciplinary action according to SCPS Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **NOTICE OF ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due

to a violation of the Student Code of Conduct.

Parent Participation

> An LEA shall ensure that one or both of the parents of a child with a disability are present at each ARC meeting or are afforded the opportunity to participate. Except for meeting concerning a disciplinary change in placement or a safety issue, an LEA shall provide written notice to the parents of a child with a disability at least seven (7) days before an ARC meeting. The meeting shall be scheduled at a mutually agreed upon time and place.
>
> 707 KAR 1:320 Section 4 (1)
> 34 CFR 300.322 (a)

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

Methods to Ensure Parent Participation

> An LEA shall ensure parent participation in the ARC meeting if the parent is unable to attend by using other methods, which may include individual or conference telephone calls or video conferencing.
>
> 707 KAR 1:320 Section 4 (5)
> 34 CFR 300.322 (c)

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

> When using an interpreter or other action, as appropriate, an LEA shall take whatever action is necessary to ensure that the parents understand the proceedings at the ARC meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
>
> 707 KAR 1:320 Section 4 (7)
> 34 CFR 300.322 (e)

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

Conducting the ARC Meeting Without a Parent

> An ARC meeting may be conducted without the parent in attendance if the LEA is unable to convince the parent that they should attend. The LEA shall have a record of its attempts to arrange a mutually agreed on time and place, which may include:
> (a) Detailed records of telephone calls made or attempted and the results of those calls;
> (b) Copies of correspondence sent to the parents and any responses received; and
> (c) Detailed records of visits made to the parents' home or place of employment and the results of the visits.
>
> 707 KAR 1:320 Section 4 (6)
> 34 CFR 300.322 (d)

> An LEA may conduct an ARC meeting without a parent in attendance if the LEA is unable to convince the parent to attend. The LEA shall keep a record of its attempts to arrange a mutually agreed on time and place. These records may include:
> (a) Detailed records of telephone calls made or attempted and the results of those calls;
> (b) Copies of correspondence sent to the parents and any responses received; and
> (c) Detailed records of visits made to the parents' home or place of employment and the results of the visits.
>
> 707 KAR 1:340 Section 1 (3)
> 34 CFR 300.322 (d)

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

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

Conversations and Non-ARC Meetings without Parent Present

> LEA staff shall not be prohibited by 707 KAR Chapter 1 from having informal, or unscheduled conversations on issues which may include:
> (a) teaching methodology;
> (b) lesson plans;
> (c) coordination of service provision; or
> (d) preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.
>
> 707 KAR 1:340 Section 1 (4)
> 34 CFR 300.501 (b) (2)

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

Electronic Notices

> A parent of a child with a disability may elect to receive notices required by sections 300.503 (Prior Notice), 300.504 (Procedural Safeguards Notice), and 300.508 (Due Process Complaint) by an electronic mail communication, if the public agency makes that option available.
>
> 34 CFR 300.505

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

The ARC Chairperson may ask the parent if they prefer to receive Notice of ARC Meetings and the Conference Summary by electronic means. If the parent agrees, the ARC Chairperson documents this in the student's special education folder.

ADMISSIONS AND RELEASE COMMITTEE MEETINGS

An LEA shall ensure that each child has an ARC which includes the membership in 707 KAR 1:320 Section 3 and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.
707 KAR 1:320 Section 2 (1)
34 CFR 300.324 (b) (1)

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

1. Act on referrals according to procedures for **EVALUATION** including:
    a. reviewing a written referral;
    b. determining the need to evaluate; and
    c. obtaining written parental consent to evaluate.
2. Act on evaluation according to procedures for **EVALUATION** and **ELIGIBILITY** including:
    a. determining that a full and complete evaluation is conducted; and
    b. determining if the child meets eligibility requirements for an educational disability.
3. Develop, review, or revise an IEP according to procedures for **IEP** including:
    a. ensuring that the IEP meets regulatory requirements; and
    b. reviewing and revising the IEP at least annually or as requested by any ARC member.
4. Determine placement according to procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT** including:
    a. determining placement in the least restrictive environment;
    b. determining placement at least annually, or as the IEP is revised;
    c. proposing or refusing to provide services based on the current and complete IEP in the place determined;
    d. determining the need for written parental consent for services; and
    e. ensuring that services are provided according to procedures for **IMPLEMENTATION AND SERVICE DELIVERY**.
5. Act on reevaluation according to procedures for **EVALUATION** and **IEP** including:
    a. ensuring that a reevaluation is conducted at least every thirty-six (36) months, or as requested by any ARC member;
    b. reviewing the individual evaluation information;
    c. determining if the child continues to meet eligibility for a disability and
    d. proposing or refusing continuation or change in placement.

At the beginning of each ARC meeting, the ARC Chairperson describes the ARC process which may include the following:

1. The tasks the ARC will complete during the meeting.
2. Each ARC member has an opportunity to share information.
3. ARC members discuss and consider information brought by any member, including parents, before any group decision is made.
4. Parents and school personnel have an active and equal role in the discussion and decisions about services for the child.
5. The ARC members discuss all information during the meeting.

6. For each piece of information presented, the ARC members use consensus to decide whether or not the information is adequate or if more information is needed.
7. The issues discussed and reasons for the decisions are written in the Conference Summary.
8. The ARC uses consensus for all decision making.

NOTICE OF PARENTAL PROCEDURAL SAFEGUARDS

Written Notice of Parental Procedural Safeguards (Parent Rights)

> A copy of the procedural safeguards (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:
> (a) upon initial referral or parent request for evaluation;
> (b) upon receipt of the first state written complaint;
> (c) upon the receipt of the first filing of a due process hearing in a school year;
> (d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
> (e) upon request by a parent.
> The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.
>
> 707 KAR 1:340 Section 4 (1-2)
> 34 CFR 300.504 (a)

The ARC Chairperson provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:
(a) upon initial referral or parent request for evaluation;
(b) upon receipt of the first state written complaint;
(c) upon the receipt of the first filing of a due process hearing in a school year;
(d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
(e) upon request by a parent.

Changes to an IEP

> An ARC shall not have to be convened in order to make minor, non-programmatic, changes to an IEP, such as typographical errors, incorrect directory information about the student (i.e., birth date, age, grade, address, school, etc.), and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the LEA makes any minor, non-programmatic changes, all members of the ARC shall be given a copy of the changes and an explanation as to why the changes were made within ten (10) school days of the changes being made. If any member of the ARC objects to the changes, an ARC meeting shall be convened within a reasonable period of time to discuss the changes.
>
> 707 KAR 1:320 Section 2 (2)
> 34 CFR 300.324 (a) (6)

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

a. typographical errors;
b. incorrect directory information about the student (i.e., birth date, age, grade,

address, school, etc.); and

c. other information required on the IEP that was agreed upon by the ARC but incorrectly recorded or failed to document (e.g., beginning/ending dates, amount of time for services, type of service, etc.).

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

Audio or Video Recordings of ARC Meetings

May IEP meetings be audio- or video-tape-recorded?
The LEA has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.

34 CFR Part 300 Appendix A, Q. 21

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

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

Any recording of an ARC meeting that is maintained by the SCPS is an "education record" as defined by the Family Educational Rights and Privacy Act. The recording is subject to confidentiality requirements of the regulations under both FERPA and 707 KAR 1:360, Confidentiality. The ARC Chairperson ensures that any such recording is maintained as a part of the child's special education record and the parent is granted access to the recording.

Written Notice of Proposed or Refused Action (Conference Summary)

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

The notice required for 707 KAR 1:340 Section 3 (1) shall include:
(a) a description of the action proposed or refused by the LEA;
(b) an explanation of why the LEA proposes or refuses to take the action;
(c) a description of any other options the LEA considered and the reasons why those options were rejected;
(d) a description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;
(e) a description of any other factors that are relevant to the LEA's proposal or refusal;
(f) a statement that the parents of a child with a disability have protection under the procedural safeguards in 707 KAR Chapter 1 and 34 CFR Section 300.504, and if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
(g) sources for the parent to contact to obtain assistance in understanding the provision of this section.

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

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

Parents receive a copy of the Conference Summary regardless of whether they attend the ARC meeting. The ARC Chairperson mails a copy of the Conference Summary, with a copy of a proposed IEP, if applicable, to parents who did not attend the meeting. If the parent attended the meeting, copies of these documents are given to the parent at the close of the meeting.

If the parent agrees with the ARC decision(s), the proposed action as described is implemented. If the parent was not present at the meeting, the school initiates the action described in the Conference Summary.

(1) Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide a written notice to the parents of a child with a disability at least seven (7) days before a meeting in which the LEA:
(a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
(b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
(2) An LEA shall provide written notice to the parents of a child with a disability at least twenty-four (24) hours before a meeting concerning a safety issue or a change in placement due to a violation of a code of student conduct.

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

On the date the decision is made to pursue a disciplinary change of placement, the ARC Chairperson sends the parent a notice of the proposed disciplinary action according to SCPS Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **NOTICE OF ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due to a violation of the Student Code of Conduct. See also **CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS** in procedures for **DISCIPLINE**.

Notices in Native Language or other Mode of Communication

The notice required by 707 KAR 1:340 Section 3 shall be written in language understandable to the general public and provided in the native language or other mode of communication of the parent unless it is clearly not feasible to do so. If the native language of the parent is not a written language, the LEA shall take steps to ensure that the notice is translated orally or by other means so that the parent understands the content of the notice and that there is written evidence of this translation.

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

The ARC Chairperson determines the language or mode of communication used by the parent of the child and provides notice in that language or mode of communication unless it is clearly not feasible to do so. The native language of the parent of a child is the primary language used in the home (i.e., the language most frequently used for communication by the parent of the child). If the native language or mode of communication is not English, the ARC Chairperson informs the DoSE of the need for a translation or interpretation of the notice. The DoSE makes sure:

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

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

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

PARENTAL CONSENT

An LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services. 707 KAR 1:340 Section 5 (1) 34 CFR 300.300 (a)

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

Consent for Initial Evaluation

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

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

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

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

The ARC Chairperson gives the request for Consent for Evaluation and the Evaluation Plan to the parent with the Conference Summary.

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

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

Denial of Parent Consent for Initial Evaluation

If the parent of a child with a disability refuses consent for an initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in this section (707 KAR 1:340) for mediation, dispute resolution meeting, or a due process hearing. However, the LEA shall still be considered to be in compliance with 707 KAR 1:300, Section 4, and 707 KAR 1:310 if it declines to pursue the evaluation.

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

If the parent denies consent for an initial evaluation, the ARC Chairperson contacts the DoSE regarding the refusal. When parent and SCPS personnel disagree on consent for initial evaluation, the parties may request mediation, or either party may request a dispute resolution meeting or a due process hearing to obtain consent for the proposed evaluation (according to **MEDIATION, DISPUTE RESOLUTION,** and **DUE PROCESS HEARING** in procedures for **PROCEDURAL SAFEGUARDS**).

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

If the child is in the custody of the state and is not residing with the child's parent, the LEA is not required to obtain consent from the parent for initial evaluations to determine the eligibility of the child if:
(a) despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);
(b) the rights of the parent(s) have been terminated by a court of competent jurisdiction; or
(c) the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

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

If the child is a foster child and does not reside with the child's parents, the LEA shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The LEA shall not be required to obtain this consent if:
(a) despite reasonable efforts, the LEA cannot discover the whereabouts of the parent(s);
(b) the rights of the parent(s) have been terminated by a court of competent jurisdiction; or
(c) the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction and an individual appointed by the court to represent the child has given consent to the initial evaluation.

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

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

a. despite reasonable efforts, SCPS cannot discover the whereabouts of the parent(s);

b. the rights of the parent(s) have been terminated by a court of competent jurisdiction, which is on file in the student record; or
c. SCPS discovers that the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction, SCPS personnel ask the individual appointed by the court to represent the child to give consent for the initial evaluation.

The ARC Chairperson follows procedures for **REPRESENTATION OF CHILDREN** in **PROCEDURAL SAFEGUARDS**.

> In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parents(s), the LEA shall keep a record of its attempts which may include:
> (a) detailed records of telephone calls made or attempted and the results of those calls;
> (b) copies of correspondence sent to the parents and any responses received; and
> (c) detailed records of the visits made to the parent's home or place of employment and the results of those visits.
>
> 707 KAR 1:340 Section 5 (4)
> 707 KAR 1:340 Section 6 (4)
> 34 CFR 300.322 (d)

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

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

Consent for Reevaluation

> The LEA shall obtain consent before conducting a reevaluation of a child with a disability. If the parent refuses to consent, the LEA may pursue the reevaluation by using the procedures in this administrative regulation for mediation, dispute resolution meeting, or a due process hearing.
>
> 707 KAR 1:340 Section 5 (6)
> 34 CFR 300.300 (c) (1)

> Parental consent for reevaluation shall not be required if the LEA can demonstrate that:
> (a) it made reasonable efforts to obtain such consent, and followed the procedures in 707 KAR 1:340 Section 5 (4) to show those efforts; and
> (b) the parent failed to respond.
>
> 707 KAR 1:340 Section 5 (7)
> 34 CFR 300.300 (c) (2)

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

Consent for Special Education and Related Services

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

1. to the provision of special education and related services in the least restrictive environment;
2. parental consent is given voluntarily; and
3. the consent statement explains that special education and related services will be provided as described in the IEP and in the placement(s) specified by the ARC in the Conference Summary.

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

Once the parent gives consent for a child with a disability to receive special education and related services, SCPS does not require any additional consent from the parent of the child for placement to continue to receive special education and related services. Additional consent to provide services is not needed, even though the location(s) of the delivery of services may change.

Any changes in the special education program of the child after initial placement are subject to prior notice requirements (ARC Meeting and Conference Summary) but not subject to parental consent.

Denial or Revocation of Parent Consent for Services

> If the parent of a child refuses to give consent for the provision of initial specially designed instruction and related services or fails to respond to a request for consent, the LEA shall not provide such services and shall not use a due process hearing or mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.
>
> 707 KAR 1:340 Section 5 (5)
> 34 CFR 300.300 (b) (3)

If the parent denies or fails to respond to a request for consent for provision of services, the ARC Chairperson contacts the DoSE regarding the refusal. SCPS does not "override refusal to consent to the initial provision of special education and related services", therefore, does not request mediation or a due process hearing (see **PROCEDURAL SAFEGUARDS RESOURCES**, Letter to Cox, and Letter to Combs).

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

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

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

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

Consent for Release of Information for Transition Services

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

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

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

REPRESENTATION OF CHILDREN

The ARC Chairperson makes sure that each child is represented by verifying the location, legal status and availability of parents or guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child, or the provision of a free appropriate public education (see Representative of the Child or Youth handout in **PROCEDURAL SAFEGUARDS RESOURCES**).

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

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

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

who meets the definition of "parent" in Section 1 (43) (a) through (d) of 707 KAR 1:280 to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

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

Determination of Representative

No later than at the time of referral, the ARC Chairperson, through a review of the records of the child, determines if a child is:

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

Biological or Adoptive Parents

Either parent, biological or adoptive, has parental rights unless there has been a judicial determination that limits or terminates their rights. Parents are considered available when a current residence or mailing address is identified by the ARC Chairperson.

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

In the case of divorced parents that have joint legal custody, the ARC Chairperson assumes that if only one parent is present, the parent present has consulted with the parent not present and the input and decisions offered by the parent represent both parents' input. In the case of a divorced parent that has sole legal custody, that parent may make decisions without the other parent present or offering input.

Legal Guardian

If the child is represented by a legal guardian, the ARC Chairperson obtains a copy of the court order determining the legal guardianship. The ARC Chairperson places a copy of the court order in the educational record of the child.

If there is no parent available, and the person caring for the child is doing so as the result of State agency or court action rather than through an informal arrangement that was voluntarily agreed to by the parent, the ARC Chairperson requires this person to provide information regarding the legal status of the rights of the parent with respect to the child. This person does not qualify as the educational representative unless the person is a private individual who can produce a court order that he or she has been granted guardianship of the child. Unless the person can produce a court order that he or she is a private (as opposed to state-appointed) guardian, such a person may not represent the child (e.g., sign permission or other due process forms) and, absent written parental permission, is not allowed access to the educational records of the child.

Person Acting As a Parent

If the ARC Chairperson determines there is no parent available and the person with whom the child resides is a family member, friend, or other person with whom the parent has made an informal arrangement to care for the child without state agency or court intervention, the ARC Chairperson determines this is a person "acting as a parent" and as such has all the rights of a parent until the parent reappears to reclaim his or her rights. SCPS uses the “Authorization for Appointment of a Representative for Educational Decisions” form or “Statement of Authorization for Representation” form to document the parental representative (see Procedural Safeguards Resources).

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

Commitment to CFC or DJJ when Parental Rights are not Terminated

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

Commitment to CFC or DJJ when Parental Rights are Terminated

> "Ward of the state" means a child who has been committed to the Cabinet for Families and Children (CFC) or the Department of Juvenile Justice (DJJ) through a legal process, whether the commitment is voluntary or non-voluntary and the biological or adoptive parents rights have been terminated.
>
> 707 KAR 1:280 Section 1 (66)

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

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

Foster Parent

The ARC Chairperson verifies that the child resides in a foster home or is otherwise in custody of a State agency.

If the child is placed with foster parents, the ARC Chairperson determines if parental rights have been terminated. If parental rights have not been terminated, the ARC Chairperson follows the procedures for **REPRESENTATION OF CHILDREN** in **PROCEDURAL SAFEGUARDS**, Natural or Adoptive Parents or Legal Guardian. If no parent is known, their whereabouts cannot be determined, or parental rights have been terminated, the DoSE may assign the foster parent as a surrogate parent in accordance with procedures.

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

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

Age of Majority

> When a child with a disability reaches the age of majority (age eighteen), all rights under 707 KAR Chapter 1 shall transfer from the parents to the child, unless the child has been declared incompetent under KRS Chapter 387 in a court of law. An LEA shall notify the child with a disability and the parents of the transfer of the rights.
>
> 707 KAR 1:340 Section 6 (11)
> 34 CFR 300.520 (a)

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

Surrogate Parent

> An LEA shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:
> (a) no individual can be identified as a parent as defined in 707 KAR 1:280;
> (b) an LEA, after reasonable efforts, cannot discover the whereabouts of the parent;
> (c) the child is a ward of the state; or
> (d) the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431.
>
> 707 KAR 1:340 Section 6 (3)
> 34 CFR 300.515 (a)

> An LEA shall have a procedure for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part B of IDEA, 34 CFR Part 300, and 707 KAR Chapter 1 to make decisions about educational issues for a child.
>
> 707 KAR 1:340 Section 6 (5)
> 34 CFR 300.519 (b)

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

The ARC Chairperson notifies the DoSE that a surrogate parent may be needed when:

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

The ARC Chairperson contacts an eligible relative to determine if the person is willing to serve as a surrogate if the parent of a child is unavailable to serve as the representative of the child.

If the ARC Chairperson informs the DoSE that there is no caregiver or relative eligible and willing to serve as surrogate, the DoSE selects a surrogate to serve as the educational representative for the child.

Unaccompanied Homeless Youth

> In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in until a surrogate parent can be appointed that meets all the requirements of 707 KAR 1:340 Section 6.
>
> 707 KAR 1:340 Section 6 (8)
> 34 CFR 300.519 (f)

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

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

Criteria for Selection of Surrogate Parent Volunteers

> An LEA shall have a procedure for selecting surrogates. A surrogate:
> (a) shall not be an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;
> (b) shall not have any personal or professional interest that conflicts with the interests of the child; and
> (c) shall have knowledge and skills that ensure adequate representation of the child.
>
> 707 KAR 1:340 Section 6 (6)
> 34 CFR 300.519 (d)

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

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

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

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

> A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.
>
> 707 KAR 1:340 Section 6 (7)
> 34 CFR 300.519 (e)

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

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

<u>Assignment of Surrogate Parent Volunteers</u>

> An LEA shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the LEA that the child needs a surrogate.
>
> 707 KAR 1:340 Section 6 (9)
> 34 CFR 300.519 (h)

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

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

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

<u>Surrogate Parent Training</u>

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

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

> The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.
>
> 707 KAR 1:340 Section 6 (10)
> 34 CFR 300.519 (g)

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

Termination of a Surrogate Parent Assignment

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

1. the "parent" becomes known or is located;
2. upon emancipation of the youth;
3. the surrogate no longer meets the qualifications and criteria for being a surrogate parent; or
4. the surrogate is not fulfilling his or her responsibilities.

The DoSE sends written notice to the surrogate informing the surrogate of the termination and indicating the reasons for termination. A copy of the letter is maintained in the files of the DoSE.

STATE COMPLAINT PROCEDURES

> A copy of the procedural safeguards (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:
> (a) upon initial referral or parent request for evaluation;
> (b) upon receipt of the first state written complaint;
> (c) upon the receipt of the first filing of a due process hearing in a school year;
> (d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
> (e) upon request by a parent.
> The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.
>
> 707 KAR 1:340 Section 4 (1-2)
> 34 CFR 300.504 (a)

The ARC Chairperson provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:
(a) upon initial referral or parent request for evaluation;
(b) upon receipt of the first state written complaint;
(c) upon the receipt of the first filing of a due process hearing in a school year;
(d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
(e) upon request by a parent.

The right to file a complaint with the Kentucky Department of Education and the procedures for filing, including the information required and timelines for resolution are included in the Parent's Rights document and the *Kentucky Department of Education Special Education Procedures Manual,* November 2000.

Right to File a Complaint

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

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

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

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

Procedures for Addressing the Complaint

The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 CFR 300.151 through 300.153:
(a) the Kentucky Department of Education shall have sixty (60) days after a complaint is filed to carry out an independent investigation, if necessary;
(b) the complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;
(c) the LEA shall have an opportunity to respond to the complaint including, at least:
1. a proposal to resolve the complaint;
2. an opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;
(d) the department shall review all relevant information; and

(3) the department shall issue a written decision addressing each allegation in the complaint and containing the findings of fact and conclusions and the reasons for the final decision.
707 KAR 1:340 Section 7 (1)
34 CFR 300.153 (a)

The Kentucky Department of Education shall allow an extension of the time limit under 707 KAR 1:340 Section 7 (1) only if exceptional circumstances exist or if the parent and the LEA agree to extend the time line to engage in mediation or other alternative means of dispute resolution..
707 KAR 1:340 Section 7 (6)
34 CFR 300.152 (b) (1)

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

Right to Appeal Written Decision from KDE/DECS

The complainant, parent or the LEA shall have a right to appeal the written decision from a complaint to the Commissioner of the Kentucky Department of Education. This appeal shall be filed within fifteen (15) business days of the receipt of the decision.
707 KAR 1:340 Section 7 (5)
34 CFR 300.660 (a) (1) (ii)

Implementation of Final Decision

The KDE shall ensure the final decision from a complaint shall be effectively implemented. To achieve compliance, the Department of Education may apply:
(a) technical assistance activities;
(b) negotiations; or
(c) corrective actions.
707 KAR 1:340 Section 7 (7)
34 CFR 300.152 (b) (2)

MEDIATION PROCESS

An LEA and parent of a child with a disability shall have the right to request mediation from the Kentucky Department of Education to resolve any disputes that may arise under 707 KAR Chapter 1.
707 KAR 1:340 Section 8 (1)
34 CFR 300.506 (a)

The mediation process, if chosen, shall:
(a) be voluntary;
(b) not be used to deny or delay a parent's right to a due process hearing under 707 KAR 1:340 Section 8 and Section 11 or 34 CFR Section 300.507, or to deny any other rights afforded under this administrative regulation or IDEA Subpart E; and
(c) be conducted by a qualified and impartial mediator trained in effective mediation techniques.
707 KAR 1:340 Section 9 (1)
34 CFR 300.506 (b) (1)

The Kentucky Department of Education shall maintain a list of qualified mediators who shall:
(a) not be an employee of: the Kentucky Department of Education or the LEA that is involved in the education or care of the child;

(b) be chosen at random for the mediation process; and
(c) not have a personal or professional conflict of interest.

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

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

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

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

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

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

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

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

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

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

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

SCPS may offer mediation to a parent as an option to settle differences concerning the identification, evaluation, educational placement, or the provision of a free appropriate public education. The ARC Chairperson or DoSE explains to the parent that mediation is not a required process, but is offered by SCPS to settle differences or when a due process hearing is requested. If the parents and SCPS agree to mediate the issue, SCPS and the parent jointly submit a written request to KDE for mediation.

SCPS uses the procedures and forms in the *Kentucky Department of Education's Special Education Procedure Manual,* November 2000 and *Mediation for Students with Disabilities*, November 1999 (see **PROCEDURAL SAFEGUARDS RESOURCES**) to begin the process for mediation.

DISPUTE RESOLUTION

Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who

has decision-making authority on behalf of the LEA shall also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.

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

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

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

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

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

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

If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is:
(a) signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and
(b) is enforceable in any state court of competent jurisdiction or a district court of the United States.

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

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

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

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

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

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

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

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

(8) The failure of the parent who filed the due process hearing request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless the parties have jointly agreed to waive the resolution process or use mediation.
(9) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request, at the conclusion of the thirty (30) day period, that a hearing office dismiss the parent's due process hearing request.

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

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

The LEA shall keep a record of the reasonable efforts made to obtain the participation of the parents in the resolution meeting such as:
(a) Detailed records of telephone calls made or attempted and the results of those calls;
(b) Copies of correspondence sent to the parents and any responses received; and
(c) Detailed records of visits made to the parents' home or place of employment and the results of the visits.

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

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

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

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

The forty-five (45) day timeline for the due process hearing in 34 CFR 300.515 starts the day after one (1) of the following events:
(a) both parties agree in writing to waive the resolution meeting;
(b) after either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or
(c) if both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later that parent or the LEA withdraws from the mediation process.

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

DUE PROCESS HEARING

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

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

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

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

707 KAR 1:340 Section 8 (3)
34 CFR 300.507 (a) (2)

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

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

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

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

A copy of the procedural safeguards (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:
(a) upon initial referral or parent request for evaluation;
(b) upon receipt of the first state written complaint;
(c) upon the receipt of the first filing of a due process hearing in a school year;
(d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
(e) upon request by a parent.
The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.

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

The ARC Chairperson provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:
(a) upon initial referral or parent request for evaluation;
(b) upon receipt of the first state written complaint;
(c) upon the receipt of the first filing of a due process hearing in a school year;
(d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
(e) upon request by a parent.

Hearing Requests

The parent of a child with a disability or the attorney representing the child shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:
a. the name of the child;
b. the address of the residence of the child;
c. the name of the school the child is attending;
d. a description of the nature of the problem; and

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

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

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

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

A party shall not have a due process hearing until the party, or the attorney representing the party, files a notice that contains the information listed in 707 KAR 1:340 Section 11 (1). This notice shall be provided to the other party and to the Kentucky Department of Education.

707 KAR 1:340 Section 11 (3)
34 CFR 300.508 (a)

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

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

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

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

707 KAR 1:340 Section 11 (4)

See **PROCEDURAL SAFEGUARDS RESOUCES,** *Kentucky Department of Education Special Education Procedures Manual*, November 2000, for KRS Chapter 13B.

EXCEPTIONAL CHILDREN APPEALS BOARD

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

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

Either party involved in the hearing regarding the identification, evaluation, placement, or provision of free appropriate public education of a child with disabilities may appeal the decision of the hearing officer. To request an appeal, the party sends, by certified mail,

within thirty (30) calendar days of the hearing officer's decision, a written request for an appeal to the Exceptional Children Appeals Board, Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601. The requesting party also sends a copy of the appeal to the opposing party.

Civil Action

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

707 KAR 1:340 Section 12 (2)
34 CFR 300.514 (d)
34 CFR 300.516 (a)

Child Status during Pendency of Judicial Proceedings

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

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

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

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

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

34 CFR 300.518 (d)

During the pendency of any administrative proceedings (e.g., due process hearing, appeal to the Exceptional Children Appeals Board) or judicial proceedings (i.e., civil action brought under IDEA), SCPS ensures that the child remains in the current educational placement, unless SCPS and the parent agree otherwise. In the case of a weapon offense, drug offense, or incident involving a threat to the safety of self or others, the student remains in the alternative placement until the discipline procedures are completed according to **VIOLATIONS FOR DRUGS, WEAPONS, OR BEHAVIOR INDICATING A STUDENT IS DANGEROUS TO SELF OR OTHERS** in procedures for **DISCIPLINE**.

If the complaint involves a child who is transitioning from the early intervention program into preschool for initial services, SCPS provides any services the ARC agreed upon prior to the due process hearing request.

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

DISCIPLINE OF CHILDREN WITH DISABILITIES

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

STUDENT BEHAVIOR

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

The Spencer County Public Schools (SCPS) Student Handbook, which is provided to all students at the beginning of the school year, describes the expectations for child behavior and consequences for misbehavior and policy violations. Consequences are applied for all children, including children with disabilities, as long as the consequence does not conflict with the provisions of an IEP or behavioral intervention plan. The ARC may modify or adapt the consequences utilized with all children to meet the needs of a child with a disability as documented in an IEP or a behavioral intervention plan.

In School Suspension

> It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in §300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy. Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in §300.536.
>
> 34 CFR Part 300, Comments, p. 46715

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

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

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

Student Behavior on the School Bus

> The principal or the person or persons designated by the board of education shall be responsible for the discipline of the pupils who ride school buses. The principal shall assist the school bus driver with discipline problems which arise on the bus when the school bus driver shall make the proper report on the discipline problem either in person or in writing.

A pupil who creates a serious safety or discipline problem or persists in creating discipline problems on the school bus shall be reported to the principal or person designated by the board to handle bus discipline problems. The principal or person designated by the board shall have the authority to forbid the pupil bus riding privileges until the problem is resolved. A student whose bus riding privileges have been suspended shall not be allowed on the bus again until the driver receives written permission by the principal or his designee.

702 KAR 5:030 (19-20)

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

1. the IEP does not prohibit the suspension;
2. the suspension does not result in a change of placement for the student (see **CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS**); and
3. the behavior has not previously been determined to be a manifestation of the student's disability (see **MANIFESTATION DETERMINATION**).

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

34 CFR Part 300, Comments, p. 46715

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

REMOVAL FOR 10 SCHOOL DAYS OR LESS DURING A SCHOOL YEAR

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

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

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

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

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

KRS 158.150 (8)

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

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

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

> (a) Day means calendar day unless otherwise indicated as business day or school day;
> (c) School day means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.
>
> 34 CFR 300.11 (a) & (c)

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

> An LEA shall be required to provide educational services to a child with a disability during periods of removal of ten (10) or less school days in the same school year if it provides services to children without disabilities who are similarly removed.
>
> 707 KAR 1:340 Section 13 (8)
> 34 CFR 300.530 (d) (3)

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

> After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in 707 KAR 1:340 Section 13 (6) shall be provided during any subsequent days of removal.
>
> 707 KAR 1:340 Section 13 (5)
> 34 CFR 300.530 (a) (2)

If a child is suspended more than ten (10) school days in the same school year, SCPS follows for **CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS.**

CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS

> The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change of placement for a child with a disability who violates a code of student conduct.
>
> 707 KAR 1:340 Section 13 (1)
> 34 CFR 300.530 (a)

> On the date on which the decision is made to make a removal that constitutes a change of placement of a

child with a disability because of a violation of a code of student conduct, the LEA shall notify the parent so that decision, and provide the parents the procedural safeguards notice as contained in 707 KAR 1:340 Section 4.

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

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

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

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

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

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

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

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

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

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

1. suspended for more than ten (10) consecutive school days in a school year;
2. demonstrating a pattern of behavior (see **Identifying a Pattern of Behavior** in procedures for **DISCIPLINE**); or
3. removed to an interim alternative educational setting (IAES) as a response to weapons or drug violations, or if the child has inflicted serious bodily injury upon another person see **REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING**.

Identifying a Pattern of Removals

The ARC Chairperson and/or DoSE review the behavioral information to determine if the removal constitutes a pattern by reviewing the child's behavior in relation to the following factors:

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

MANIFESTATION DETERMINATION

> Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the relevant members of the child's ARC, as determined by the LEA and the parent, must convene a meeting to review all relevant information in the student's file, including the child's IEP, any teacher observations, teacher-collected data, and any relevant information provided by the parents to determine:
> (a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or
> (b) if the conduct in question was the direct result of the LEA's failure to implement the IEP.
>
> 707 KAR 1:340 Section 14 (1)
> 34 CFR 300.530 (e)(1)

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

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

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

Behavior IS NOT a Manifestation of the Disability

> If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability (as described in Section 14 of this administrative regulation), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities for removals that would exceed ten (10) consecutive school days.
>
> 707 KAR 1:340 Section 13 (4)

If the ARC answers "NO" to both of the questions, the behavior is *not* a manifestation of the child's disability, and the child is subject to the same disciplinary procedures as any

non-disabled child. The ARC Chairperson notifies the Superintendent of the ARC decision. The Superintendent may recommend expulsion to the SCPS Board according to SCPS Board Policy.

If the child is to be expelled from school or will continue further removal from the child's current placement, the ARC Chairperson follows procedures for **PROVIDING SERVICES** in **DISCIPLINE**.

Behavior IS a Manifestation of the Disability

> The conduct shall be determined to be a manifestation of the child's disability if the ARC determines that either condition in 707 KAR 1:340 Section 14 (1) was met.
>
> 707 KAR 1:340 Section 14 (2)
> 34 CFR 300.530 (e) (2)
> 34 CFR 300.530 (c)

If the ARC answers "YES" to either of the questions, the behavior is a manifestation of the child's disability, and the child is not subject to further disciplinary procedures, unless the child's violation involved drugs or weapons (see procedures for **REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING**).

> If the ARC determines that the conduct was a manifestation of the child's disability, the ARC shall:
> (a) 1. conduct a functional behavioral assessment unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred and had implemented a behavioral intervention plan for the child; or
> 2. review the behavioral intervention plan, (if one had already been developed) and modify it, as necessary, to address the behavior; and
> (b) return the child to the placement from which the child was removed unless the LEA and the parent agree to a change of placement as part of the modification of the behavioral intervention plan or because of the special circumstances explained in 707 KAR 1:340 Section 14 (5).
>
> 707 KAR 1:340 Section 14 (4)
> 34 CFR 300.530 (f) (1) & (2)

> If the ARC determines that the condition in 707 KAR 1:340 Section 14 (1) was met, the LEA shall take immediate steps to remedy those deficiencies.
>
> 707 KAR 1:340 Section 14 (3)
> 34 CFR 300.530 (e) (3)

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

1. develops a behavioral intervention plan (BIP);
2. reviews and revises the IEP, if appropriate; and determines appropriate educational services and placement according to procedures for **IEP** and **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**; and
3. assigns staff to implement and collect data on the BIP and IEP.

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

PROVIDING SERVICES FOR STUDENTS REMOVED FOR MORE THAN TEN DAYS

6. A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:
(a) continue to receive a free appropriate education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
(b) receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications, that are designed to address the behavior violation so that it does not recur.

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

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

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

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

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

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

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

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

REMOVAL TO AN INTERIM ALTERNATIVE EDUCATIONAL SETTING

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

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

School personnel may remove a child with a disability to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is a manifestation of the child's disability, if the child:
(a) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA;

(b) knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA; or
(c) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Kentucky Department of Education or the LEA.
707 KAR 1:340 Section 14 (5)
34 CFR 300.530 (g)

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

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

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

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

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

A weapon means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.
18 USC 930 (g) (2)
34 CFR 300.530 (i) (4)

Parent Appeal from Placement Decisions

The parent of a child with a disability who disagrees with any decision regarding placement under 707 KAR 1:340 Sections 13 or 14, or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others may request a hearing by filing using the procedures in 707 KAR 1:340 Sections 8 & 11.
707 KAR 1:340 Section 15 (1)
34 CFR 300.532 (a)

If the parent disagrees with the determination of the ARC that the behavior is not related to the disability, the parent may request an expedited due process hearing according to **DUE PROCESS HEARING** in procedures for **PROCEDURAL SAFEGUARDS**.

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

3. In making a determination, the hearing officer may order a change in placement of a child with a disability. The hearing officer may:
(a) return the child to the placement from which the child was removed; or
(b) order a change in placement of the child to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or others.

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

5. An appeal under this section shall:
(a) be conducted in an expedited manner;
(b) shall occur within twenty (20) school days from the date the request is files; and
(c) shall result in a determination within ten (10) school days after the hearing.

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

If the parent or the LEA disagrees with the determination of the hearing officer, either party may request an appeal according to **EXCEPTIONAL CHILD APPEALS BOARD** in procedures for **PROCEDURAL SAFEGUARDS**.

STAY PUT PROVISION

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

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

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

PROTECTION FOR CHILDREN NOT YET ELIGIBLE FOR IDEA

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

Basis of Knowledge

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

707 KAR 1:340 Section 16 (1)

34 CFR 300.534 (b)

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

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

A district shall not be deemed to have knowledge that a child may be a child with a disability if, as a result of receiving information the LEA:
(a) conducted an evaluation and determined the child was not a child with a disability;
(b) determined an evaluation was not necessary and provided notice to the parents of these determinations; or
(c) parents refused to consent to an evaluation or refused initial services.

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

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

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

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

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

Before taking disciplinary measures against a child, the principal follows SCPS suspension and expulsion procedures. The principal reviews the child's records and discusses with the child's current teacher(s) and counselor(s) to determine if the district had knowledge that the child may be in need of special education services.

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

Evaluation Request During Disciplinary Proceedings

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

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

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

REPORTING TO LAW ENFORCEMENT AGENCIES

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

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

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

KRS 158.154

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

KRS 158.155 (4)

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

KRS 158.990

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

KRS 600.020 (3)

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

Temporary Injunctive Relief for Dangerous Children

If the admissions and release committee determines that an exceptional child's behavior is related to his disability, the child shall not be suspended any further or expelled unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be terminated during a period of expulsion and during a suspension after a student is suspended for more than a total of ten (10) days during a school year. A district may seek temporary injunctive relief through the courts if the parent and the other members of the admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.

KRS 158.150 (7) (c)

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

Transmission of Records

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

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

If SCPS personnel report a crime, the SCPS Representative contacts the parents of the child in accordance with district procedures. The SCPS Representative explains the circumstances of the criminal report, and informs the parent that educational records are released to authorities under the following conditions (see procedures for **DISCLOSURE OF EDUCATIONAL RECORDS** in **CONFIDENTIALITY**):

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

Files created and maintained by a School Resource officer for law enforcement purposes may not be governed by FERPA, and may, under some circumstances be released without parent consent according to SCPS Board Policy.

EVALUATION

REFERRAL SYSTEM

> The referral system shall be conducted in such a manner as to prevent inappropriate over identification or disproportionate representation by race and ethnicity of children in special education by ensuring that each child has been provided appropriate instruction and intervention services prior to referral.
>
> 707 KAR 1:300 Section 3 (2)
> 34 CFR 300.646

Spencer County Public Schools (SCPS) ensures that students are provided with appropriate instruction and interventions prior to referral through the use and implementation of the SCPS System of Interventions (SoI).

Referral Sources

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

School Personnel as Referral Source

The building Principal or designee assists individuals with knowledge about a child in understanding and completing the referral process when appropriate. A teacher or other staff member who seeks to refer a child is supported in the development of appropriate instructional and/or behavior supports for the child.

Parent or other Non-school as Referral Source

If a parent or other person not employed by SCPS seeks assistance for a child whom he or she believes to have a disability, the building principal or designee provides assistance to make sure the written referral process has begun. Once documentation is completed, the principal or designee ensures the written referral:

1. includes the required information, and
2. is submitted to the ARC.

When a referral is submitted by any source, the ARC Chairperson convenes an ARC to determine if the referral is complete. One component of a complete referral is the documentation of interventions, appropriate instruction, and behavior supports that have been implemented prior to referral to target and address the behavior(s) of concern.

Prior to a Referral for Special Education Assessment

SCPS utilizes a System of Interventions (SoI) to provide support to meet the diverse learning and behavioral needs of students.

> The LEA shall ensure that:
> (a) prior to, or as a part of the referral process, the child is provided appropriate, relevant research-based instruction and intervention services in regular education settings, with the instruction provided by

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

707 KAR 1:300 Section 3 (3)
707 KAR 1:310 Section 6
34 CFR 300.309 (b)

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

707 KAR 1:300 Section 3 (4)
707 KAR 1:310 Section 7
34 CFR 300.309 (c) (1)

SCPS ensures that students are provided with appropriate instruction and interventions prior to referral through the use and implementation of the SCPS System of Interventions (SoI). The System of Interventions (SoI) provides support to meet the diverse learning and behavioral needs of students.

Early Intervening Services

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. In order to provide these coordinated early intervening services, an LEA shall not spend more than 15% of the money received under IDEA Part B.

707 KAR 1:300 Section 2
34 CFR 300.226

See **EVALUATION RESOURCES**, June 22, 2007 E'Specially DECS.

Referral Information

The written referral and student performance information includes the following:

1. personally identifiable data including name and date of birth of child, social security number if available, parent name, address, and phone number;
2. an educational history which may include: school(s) attended; patterns of attendance (e.g., excessive absences, excessive tardiness, discipline reports, suspension(s); current level or grade placement; years in school; performance on district-wide and state mandated assessments; results of systematic screenings; a summary of achievement data; family and student programs (provided through the school or other agencies) in which the child has received services; and other relevant information;
3. a written description of the current status of the child in relation to the Program of Studies and similar age peers in the following areas: communication; academic achievement and functional performance or developmental skills; health, hearing, vision and motor abilities; social and emotional interaction; general intelligence; and transition needs for students who are in 8th grade or are age 14 and older; and

4. for each area of concern, documentation or written summary of the results of SCPS System of Interventions (SoI) process which includes appropriate instruction, support services, and interventions that have been provided to address the concern and improve the educational achievement and functional performance and/or behavior of the child.

Upon receipt and review of a referral, the ARC Chairperson selects and notifies members of the ARC according to procedures for **NOTICE OF ARC MEETING** in **PROCEDURAL SAFEGUARDS**.

ARC REVIEW OF STUDENT PERFORMANCE INFORMATION

Prior to meeting to review the referral information, the ARC Chairperson selects and notifies ARC members for an ARC Meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to bring data or information about the child to use in reviewing the referral.

A member of the ARC may be excused from attending the meeting according to procedures for **EXCUSAL FROM ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**.

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

The ARC Chairperson or another ARC member asks the parent if they received a copy of the Procedural Safeguards (parent rights), and reviews the rights (see **PROCEDURAL SAFEGUARDS RESOURCES,** Summary of Procedural Safeguards).

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

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

ARC Review of Data

14. Assessment tools and strategies shall be used that provide relevant information that directly assists and is used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as part of any reevaluation, the ARC and other qualified professionals, if necessary, shall review existing evaluation data on the child including:
(a) evaluations and information provided by the parents;
(b) current classroom-based, local, or state assessments and classroom-based observations; and

(c) observations by teachers and related services providers.

15. On the basis of the review, and input from the parents, the ARC shall identify what additional data, if any, are needed to determine:
(a) whether the child has a particular category of disability and the educational needs of the child, or in the case of a reevaluation of the child, whether the child continues to have a disability, and the educational needs;
(b) the present levels of academic achievement and related developmental needs of the child;
(c) whether the child needs special education and related services, or in the case of a reevaluation, whether the child continues to need specially designed instruction and related services; and
(d) whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum.

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

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

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

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

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

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

See the Answer Book on Special Education Law, Chapter 2, Question 6.

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

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

Review of Appropriate Interventions

A child shall not be determined to be eligible if the determinant factor for that eligibility determination is:
(a) a lack of: appropriate instruction in reading including the essential components for reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. Section 6301;

(b) a lack of appropriate instruction in math; or
(c) limited English proficiency and the child does not otherwise meet eligibility criteria.

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

Step 3: The ARC reviews the relevant research-based instruction and interventions implemented for the area(s) of concern to verify that appropriate instruction and support have been provided to address factors possibly contributing to deficits in educational performance. The ARC analyzes the information and decides if the interventions were:

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

Determination of Sufficient Information

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

Determination of a Suspected Disability

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

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

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

Identifying the Areas for Assessment

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

707 KAR 1:300 Section 4 (11)
34 CFR 300.304 (c) (6)

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

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

Requesting Consent for Evaluation Services

> A LEA shall obtain informed parental consent before conducting an initial evaluation or reevaluation and before the initial provision of specially designed instruction and related services.
>
> 707 KAR 1:340 Section 5 (1)
> 34 CFR 300.300 (a) (1)

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

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

If the parent does not give written consent, the ARC Chairperson and the DoSE follow procedures for **Denial or Revocation of Parental Consent** in **PROCEDURAL SAFEGUARDS**.

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

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

<u>Referral and Student Performance Information does not Support a Suspected Disability</u>

If the ARC determines that the referral does not support the possibility of the presence of a disability, and decides not to conduct an evaluation, the recorder documents the decisions in the Conference Summary. The ARC may discuss specific instructional and curriculum supports that might be implemented in the regular classroom including support services (e.g., Title I, counseling, peer tutoring, ESS services) to be offered through the SCPS.

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

Students who Transfer During the Evaluation Process

> Assessments and evaluation of children with disabilities that transfer from one school district to another in

the same academic year shall be coordinated with the previous and current schools as necessary and as expeditiously as possible, to ensure prompt completion of a full evaluation.

707 KAR 1:300 Section 4 (13)
34 CFR 300.304 (c) (5)

The sixty (60) school-day timeline shall not apply in the following situations:
(a) if the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, a long as the new LEA is making sufficient progress to complete the evaluation and the parent and the LEA agree to a specific time when the evaluation shall be completed; or
(b) if the parent repeatedly fails or refuses to produce the child for evaluation.

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

Upon receiving the records of a student who is transferring to SCPS during the evaluation process, SCPS staff reviews the record and contacts the previous district to coordinate the completion of the evaluation. SCPS staff reviews the status of the child's evaluation and determines if the sixty (60) school day timeline can be met. SCPS staff discuss with the parent the progress of the child in the evaluation process and work together to agree on the timeline for completion of the evaluation.

SCPS staff follow **Transmittal of Educational Records for Transfer Students** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

EVALUATION INSTRUMENTS AND PROCESS

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

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

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

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

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

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

7. information provided by the teachers and service providers

Evaluation Criteria and Procedures

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

> A standardized test given to a child shall:
> (a) have been validated for the specific purpose for which it is used;
> (b) be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests; and
> (c) be conducted under standard conditions unless a description of the extent to which it varied from standard conditions is documented in the evaluation report.
>
> 707 KAR 1:300 Section 4 (6)
> 34 CFR 300.304 (c) (1)

> Tests and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
>
> 707 KAR 1:300 Section 4 (7)
> 34 CFR 300.304 (c) (2)

> A single procedure shall not be used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
>
> 707 KAR 1:300 Section 4 (9)
> 34 CFR 300.304 (b) (2)

> Assessments tools used shall be technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
>
> 707 KAR 1:300 Section 4 (12)
> 34 CFR 300.304 (b) (3)

Observations for Children Suspected of Having a Specific Learning Disability

> At least one team member other than the child's regular education teacher shall observe the child in the learning environment, including the regular classroom setting, to document academic performance and behavior in the area of difficulty. If the child is less than school age or is out of school, the observation shall take place in an environment appropriate for the child.
>
> 707 KAR 1:310 Section 2 (5)
> 34 CFR 300.310

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

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

The child is observed in the environment(s) in which the targeted behavior occurs.

When a child is less than school age, or out of school, observation(s) are conducted in age appropriate environments (e.g., preschool programs, vocational programs, day care, community, home).

At least one (1) team member other than the child's regular education teacher observes the child's academic performance in the regular classroom setting. If the child is less than school age or is out of school, the observation takes place in an environment appropriate for the child.

Observation(s) are conducted by someone, other than the regular classroom teacher of the child, who is specifically trained in observation techniques and methods (e.g., teacher, psychologist, guidance counselor).

Tests Administered in the Native Language or Other Communication Mode

> Tests shall be selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
>
> 707 KAR 1:300 Section 4 (8)
> 34 CFR 300.304 (c) (3)

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

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

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

Responsibilities of Evaluation Personnel

> Tests and other evaluation materials used to assess a child shall be:
> (a) selected and administered so as not to be discriminatory on a racial or cultural basis; and
> (b) provided and administered in the child's native language or other mode of communication most likely to yield accurate information on what the child knows and can do academically, developmentally, and functional, unless it is clearly not feasible to do so.
>
> 707 KAR 1:300 Section 4 (2)
> 34 CFR 300.304 (c) (1)

Over-Representation or Under-Representation

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

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

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

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

1. specific areas of evaluation of children and youth with disabilities;
2. the specific evaluation procedures used with children and youth with disabilities;
3. use of the procedures for the purpose intended by the developer and with individuals for whom their reliability and validity are empirically supported; and
4. selection and administration of evaluation procedures so that impaired motor, emotional, communication, and sensory skills or cultural differences do not interfere with the evaluation of other skills and abilities.

SCPS evaluation personnel make sure that:

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

Each evaluator:

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

Contractual Arrangements with Evaluators

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

Written Evaluation Report

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

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

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

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

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

1. child identification information (i.e., name, parents, phone, date of birth, grade, school);
2. a comparison and interpretation of the performance of the child to similar age peers in areas;
3. the full name of all instruments and procedures used, the date each was administered and by whom; any departures from standard test administration procedures and the reasons for that departure;
4. data and sources from standardized, norm-referenced measures which:
    a. include standard scores and not solely percentiles, grade, or age equivalents;

   b. are reported with confidence intervals; and
   c. are in a form that allows for inter-test comparisons (e.g., converted to age-based scores);
5. data from all informal measures, including:
   a. results of interventions tried before referral;
   b. a summary of behaviors noted during the observation(s) of the child;
6. a discussion of any discrepancies among evaluation results, e.g., between formal test results and the customary behaviors and daily activities of the child;
7. statements about the unique or individual differences of the child related to the education environment and success in general education curriculum;
8. statements about specific classroom tasks or contexts which are unique to the child (e.g., error pattern analysis, learning style or learning preferences, incentive or motivational style, communication and interpersonal skills);
9. statements about other factors that impact the educational performance of the child (e.g., medical, environmental, cultural, or linguistic factors);
10. descriptions of the types of activities which might effectively meet the unique educational needs of the child (e.g., instructional techniques, modifications or adaptations, behavior management strategies, lighting, study carrels); and
11. a list of the names and professional roles of all evaluators.

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

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

REEVALUATION

> An LEA shall ensure a reevaluation, unless the parent and LEA agree that a reevaluation is unnecessary. A reevaluation may consist of the review described in 707 KAR 1:300 Section 4 (14) and is conducted at least every three (3) years to determine:
> (a) the present levels of performance and educational needs of the child;
> (b) whether the child continues to need specially designed instruction and related services; and
> (c) whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.
>
> 707 KAR 1:300 Section 4 (18)
> 34 CFR 300.305 (a) (2) (B)

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

2. have a current Service Plan; and
3. are eligible for special education and related services, attend Private Schools, but are not currently receiving services (see **CHILD FIND SYSTEM** in procedures for **CHILD FIND**).

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

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

> An LEA shall evaluate a child with a disability in accordance with 707 KAR 1:300 before determining that the child is no longer a child with a disability. The LEA 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 of eligibility for a free, appropriate public education.
>
> 707 KAR 1:300 Section 4 (20)
> 34 CFR 300.305 (e) (1-2)

The ARC conducts a reevaluation according to **ARC REVIEW OF STUDENT PERFORMANCE INFORMATION** in procedures for **EVALUATION** prior to:

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

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

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

> For students who graduate or age out of the program, the LEA shall provide the child with a summary of the child's academic achievement and functional performance including recommendations on how to assist the child in meeting the child's postsecondary goals.
>
> 707 KAR 1:300 Section 4 (21)
> 34 CFR 300.305 (e) (3)

Prior to releasing the student, the ARC Chairperson assigns a SCPS staff person to prepare a summary, in consultation with the student, of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the postsecondary goals. SCPS staff provides the student with a copy of the summary before graduation according to procedures for **Graduation with a Diploma, Certificate of Attainment**, and **Exceeding the Age Eligibility for FAPE** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

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

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

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

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

LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:
(a) teaching methodology;
(b) lesson plans;
(c) coordination of service provision; or
(d) preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

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

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

ARC MEETING TO DISCUSS THE NEED FOR A REEVALUATION

Prior to meeting to discuss the need for a reevaluation, the ARC Chairperson selects and notifies ARC members for an ARC Meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to bring data or information about the child to use in reviewing the need for a reevaluation.

A member of the ARC may be excused from attending the meeting according to procedures for **EXCUSAL FROM ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**.

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

ARC Review of Data

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

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

To determine the needs for reevaluation, the ARC reviews the educational record,

information provided by the parents, current classroom based assessments and observations, teacher and related service provider observations, progress data, work samples, standardized assessment, state and district assessment, diagnostic tests, and discipline referrals.

ARC Determines Existing Data is Sufficient

On the basis of the review, and input from the parents, the ARC shall identify what additional data, if any, are needed to determine:
(a) whether the child has a particular category of disability and the educational needs of the child, or in the case of a reevaluation of the child, whether the child continues to have a disability, and the educational needs;
(b) the present levels of academic achievement and related developmental needs of the child;
(c) whether the child needs special education and related services, or in the case of a reevaluation, whether the child continues to need specially designed instruction and related services; and
(d) whether any additions or modification to the special education and related services are needed to enable the child to meet the measurable goals set out in the IEP and to participate, as appropriate, in the general curriculum.

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

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

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

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

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

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

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

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

1. a reevaluation is not necessary to determine whether the child continues to be eligible for services; and
2. a reevaluation is not warranted to determine the education or related services needs, including improved academic achievement and functional performance; and
3. the parents or teacher do not request a reevaluation.

ARC Determines Some Existing Data is Sufficient

The ARC may determine that additional information is needed when the child demonstrates significant progress of lack of progress in academic, behavioral, or social areas that may indicate a need for a change of program, services, or placement. If, after the review of existing data, the ARC determines there is sufficient data to make decisions in <u>some</u> areas, the ARC members:

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

Upon completion of the requested reevaluation information, the ARC meets to review the evaluation information according to **ARC REVIEW OF STUDENT PERFORMANCE INFORMATION** in procedures for **EVALUATION**. The Reevaluation Report completed at the prior ARC meeting becomes an addendum to the Written Evaluation Report and Eligibility Report.

<u>Parent Request for Reevaluation</u>

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

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

If, after the review of existing data, the ARC determines there is **not** sufficient data to make decisions for continued eligibility or IEP planning, and/or the ARC is proposing to assess the child in another area of suspected disability, the ARC follows **ARC REVIEW OF STUDENT PERFORMANCE INFORMATION** in procedures for **EVALUATION**.

<u>Re-administration of Cognitive Assessments</u>

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

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

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

All evaluations are conducted according to **EVALUATION INSTRUMENTS AND PROCESS** in procedures for **EVALUATION**.

INDEPENDENT EDUCATIONAL EVALUATION

> A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.
>
> 707 KAR 1:340 Section 2 (1)
> 34 CFR 300.502 (a) (1)

> If a parent requests for an independent educational evaluation at public expense because the parent disagrees with an evaluation obtained by the LEA, the LEA shall, without unnecessary delay:
> (a) initiate a due process hearing to show that its evaluation is appropriate; or
> (b) ensure that an independent educational evaluation is provided at public expense unless the LEA demonstrates in a due process hearing that the evaluation obtained by the parent did not meet LEA criteria.
>
> 707 KAR 1:340 Section 2 (3)
> 34 CFR 300.502 (b) (2)

> A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagree.
>
> 707 KAR 1:340 Section 2 (6)
> 34 CFR 300.502 (b) (1)

If a parent requests an independent educational evaluation, the ARC Chairperson documents the request, notifies the DoSE, and schedules an ARC meeting to review the request. The ARC Chairperson notifies the committee members according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**.

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

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

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

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

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

Review of an IEE

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

SCPS reviews and considers the results of any independent educational evaluation, whether obtained by the parent or the LEA. SCPS follows **ARC REVIEW OF STUDENT PERFORMANCE INFORMATION** in procedures for **EVALUATION**.

Criteria for IEE

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

> If a parent requests an independent educational evaluation, the LEA shall provide information to the parent about where an independent educational evaluation may be obtained and the LEA's applicable criteria for independent educational evaluations.
>
> 707 KAR 1:340 Section 2 (2)
> 34 CFR 300.502 (a) (2)

The DoSE gives the parents a list of independent evaluators who meet the minimum qualifications, and the criteria used by SCPS for evaluations (see **EVALUATION RESOUCES**, Independent Evaluators, and Minimum Qualifications for Evaluators).

See **EVALUATION RESOURCES**, Approved Assessment Instruments.

Cost of IEE

> A parent shall be entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parents disagree.
>
> 707 KAR 1:340 Section 2 (6)
> 34 CFR 300.502 (b) (1)

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

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

See **EVALUATION RESOURCES**, Cost Limitations for Evaluations.

ELIGIBILITY DETERMINATION

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

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

Prior to the ARC Meeting to Discuss the IEP

> LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:
> (a) teaching methodology;
> (b) lesson plans;
> (c) coordination of service provision; or
> (d) preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.
>
> 707 KAR 1:340 Section 1 (4)
> 34 CFR 300.305 (b)

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

ORGANIZING THE MEETING TO REVIEW THE EVALUATION AND DETERMINE ELIGIBILITY

Upon completion of the full and individual evaluation, the ARC Chairperson schedules an ARC Meeting for the purpose of reviewing the evaluation.

Prior to the ARC meeting for the review of evaluation information, the ARC Chairperson selects and notifies ARC members for an ARC Meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to bring data or information about the child to use in reviewing evaluation information.

A member of the ARC may be excused from attending the meeting according to procedures for **EXCUSAL FROM ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**.

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

At the ARC meeting to discuss eligibility, the ARC Chairperson or another ARC member asks the parent if they have questions or want to review parent rights (according to procedures for **PROCEDURAL SAFEGUARDS**, Notice of Procedural Safeguards).

The ARC Chairperson or other ARC member describes the decision making process for eligibility determination which may include the following steps:

1. review and analyze all evaluation procedures, tests, records, and reports from the full and individual evaluation;
2. compare results of evaluation data with the eligibility criteria of the suspected disability to determine the presence of a disability;
3. determine if sufficient information is available to make an eligibility determination;
4. specify the influence of relevant determinant factors;
5. if a disability is confirmed, determine the adverse affect of the disability upon educational performance;
6. complete eligibility report(s) to document ARC decisions; and
7. if eligibility is confirmed, discuss the development of the IEP.

ARC Review of Evaluation Information

In making eligibility determinations, an LEA shall draw upon information from a variety of sources, which may include:
(a) response to scientific, research-based interventions;
(b) vision, hearing, and communication screenings;
(c) parental input;
(d) aptitude and achievement tests;
(e) teacher recommendations;
(f) physical condition;
(g) social or cultural background;
(h) adaptive behavior; or
(i) behavioral observation.

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

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

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

Assessment tools and strategies shall be used that provide relevant information that directly assist and are used in the determination of the educational needs of the child. As part of an initial evaluation, if appropriate, or as apart of any reevaluation, the ARC and other qualified professionals, if necessary shall review existing evaluation data on the child including:
(a) evaluations and information provided by the parents;
(b) current classroom-based, local or state assessments and classroom-based observations; and
(c) observations by teachers and related services providers.

707 KAR 1:300 Section 4 (14)
34 CFR 300.304 (b) (1)

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

observations provided by teachers and related service providers.

Determining Eligibility for a Disability

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

Determination of Sufficient Information

> The evaluation shall be sufficiently comprehensive to identify all the child's special education and related services needs, whether commonly linked to the disability category in which the child has been classified.
> 707 KAR 1:300 Section 4 (11)
> 34 CFR 300.304 (c) (6)

Step 3: The ARC decides if sufficient information is available to determine if a disability exists. If sufficient information is **not** available, the ARC determines what information needs to be collected, and chooses a date to reconvene the meeting for review of the information.

Evaluation information is determined sufficient if:

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

Determinant (Exclusionary) Factors

> A child shall not be determined to be eligible if the determinant factor for that eligibility determination is:
> (a) a lack of: appropriate instruction in reading including the essential components for reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. Section 6301;
> (b) a lack of appropriate instruction in math; or
> (c) limited English proficiency and the child does not otherwise meet eligibility criteria.
> 707 KAR 1:310 Section 1 (2)
> 34 CFR 300.306 (b)

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

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

1. The child's lack of progress in the general curriculum is **not** caused or explained by the child's lack of appropriate instruction in reading, including the essential components (i.e., phonemic awareness, phonics, fluency, comprehension, and vocabulary) for reading instruction as established in ESEA, 20 U.S.C. 6301.

The implications of including the highlighted description include possible changes to the essential components of the ESEA. Districts who must take the procedures for board approval will have to revisit and possibly change this part if the ESEA changes.

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

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

Adverse Affect

> "Adverse affect" means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers.
>
> 707 KAR 1:280 Section 1 (2)
> 34 CFR 300.8

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

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

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

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

> If a determination is made that a child has a disability and needs special education and related services,

an IEP shall be developed for the child.

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

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

Evaluation does not Support Eligibility Requirements for a Disability

If the ARC determines the child does not meet eligibility requirements for a disability, the ARC documents the decisions and gives the parent copies of the Conference Summary and Eligibility Report stating the ARC decision(s).

The ARC Chairperson files copies of the Conference Summary and notices of the refused action in the educational record of the child or youth.

ELIGIBILITY REQUIREMENTS FOR EACH DISABILITY AREA

Autism

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional-behavior disability.

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

The ARC determines that a child has the disability of "autism" as defined if evaluation information verifies:

1. Significant deficits in developing verbal and non-verbal communication systems for receptive, expressive, or pragmatic language (e.g., eye-to-eye gaze, facial expression, body postures, stereo-typed and repetitive use of language, idiosyncratic language).
2. Significant deficits in social interaction (participation) including social cues, emotional expression, personal relationships, and reciprocal (contributing) interaction (e.g., lack of showing/bringing or pointing out objects of interest, lack of varied spontaneous make-believe play, social imitative play at the developmental level).
3. Repetitive ritualistic behavioral patterns including insistence on following routines and a persistent pre-occupation and/or attachment to objects (could include stereo-typed and repetitive motor mannerisms).
4. Abnormal responses to environmental stimuli.
5. The child's educational performance is not adversely affected primarily because the child has an emotional-behavior disability.
6. The autism adversely affects the educational performance of the child.
7. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited

English proficiency; and the child does not otherwise meet eligibility criteria.

See the Technical Assistance Manual on Autism.

Deaf-Blindness

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

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

The ARC determines that a child has the disability of "deaf-blindness" as defined if evaluation information verifies:

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

proficiency; and the child does not otherwise meet eligibility criteria.

Developmental Delay

"Developmental delay (DD)" means that a child within the ages of three (3) through eight (8) has not acquired skills, or achieved commensurate with recognized performance expectations for his age in one or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior. Developmental delay includes a child who demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and current level of performance. The discrepancy shall be documented by:
(a) scores of two (2) standard deviations or more below the mean in one of the areas listed above as obtained using norm-referenced instruments and procedures; or
(b) scores of one and one-half standard deviations below the mean in two (2) or more of the areas listed above using norm-referenced instruments and procedures; or
(c) the professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

707 KAR 1:280 Section 1 (22)
KRS 157.200 (1) (k)
34 CFR 300.8 (b)

The ARC determines that a child has the disability of "developmental delay" as defined if evaluation information verifies:

1. The child is three (3) through eight (8) years of age;
2. The child has not acquired skills or achieved commensurate with recognized performance expectations for his or her age in one or more of the following developmental areas:
   a. Cognition;
   b. Communication;
   c. Motor development;
   d. Social-emotional development; or
   e. Self-help or adaptive behavior.
3. The child demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and the current level of performance. This discrepancy is documented by:
   a. Scores of two (2) standard deviations or more below the mean in one (1) of the areas listed above as obtained using norm-referenced instruments and procedures; or
   b. Scores of one and one-half standard deviations below the mean in two (2) or more of the five developmental areas listed using norm-referenced instruments and procedures; or
   c. The professional judgment of the ARC that there is a significant atypical quality or pattern of development. Professional judgment is used only where normed scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.
4. The developmental delay adversely affects the educational performance of the child.

Emotional-Behavioral Disability

"Emotional-behavioral disability (EBD)" means that a child, when provided with interventions to meet instructional and social-emotional needs, continues to exhibit one or more of the following, when compared to the child's peer and cultural reference groups, across settings, over a long period of time and to a marked degree:
(1) severe deficits in social competence or appropriate behavior which cause an inability to build or maintain satisfactory interpersonal relationships with adults or peers;
(2) severe deficits in academic performance which are not commensurate with the student's ability level and are not solely a result of intellectual, sensory, or other health factors but are related to the child's social-emotional problem;
(3) a general pervasive mood of unhappiness or depression; or
(4) a tendency to develop physical symptoms or fears associated with personal or school problems.

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

707 KAR 1:280 Section 1 (24)
KRS 157.200 (1) (g)
34 CFR 300.8 (c) (4)

The ARC determines that a child has the disability of "emotional-behavioral disability" as defined if evaluation information verifies:

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

See the Emotional Behavioral Disability Technical Assistance Manual.

Hearing Impairment

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

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

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

The ARC determines that the child has a "hearing impairment" as defined if evaluation information verifies:

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

1. Deficits exist in processing linguistic information through hearing, with or without amplification.
2. The hearing impairment adversely affects the educational performance of the child.
3. The child is not be determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

Mental Disability

"Mental disability" means that a child has one of the following:
(a) a mild mental disability (MMD) in which:
1. cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;
2. adaptive behavior deficit is at least two (2) standard deviations below the mean;
3. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
4. is typically manifested during the developmental period; or
(b) a functional mental disability (FMD) in which:
1. cognitive functioning is at least three (3) standard deviations below the mean;
2. adaptive behavior deficit is at least three (3) standard deviations below the mean;
3. a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and
4. is typically manifested during the developmental period.

707 KAR 1:280 Section 1 (37)
KRS 157.200 (1) (e)
34 CFR 300.8 (c) (6)

In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate.

707 KAR 1:310 Section 1 (5)

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

Special Education Monitoring Manual, July 1998

The ARC determines that the child has a "mild mental disability" as defined if evaluation information verifies:

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

The ARC determines that the child has a "functional mental disability" as defined if evaluation information verifies:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean.
2. Adaptive behavior deficits are at least three (3) or more standard deviations below the mean.
3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.
4. Is typically manifested during the developmental period.
5. The functional mental disability adversely affects the educational performance of the child.
6. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

Multiple Disabilities

"Multiple disabilities (MD)" means concomitant impairments that have an adverse affect on the child's educational performance, the combination of which causes severe educational needs that cannot be accommodated in special education programs solely for one (1) of the impairments. Multiple disabilities does not mean deaf-blindness nor does it mean a speech or language impairment in combination with another category of disability.

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

"A pupil is not considered to have a multiple disability if the adverse affect on educational performance is

solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition."

KRS 157.200 (1) (h)

The ARC determines that the child has "multiple disabilities" as defined if evaluation information verifies:

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

Orthopedic Impairment

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

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

Orthopedic impairment means a severe physical impairment of bone or muscle which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes.

KRS 157.200 (1) (a)

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

1. The existence of one or more of the following:
   a. a severe orthopedic or physical impairment of bone or muscle caused by congenital anomaly, disease, injury, or accident;
   b. an impairment caused by disease;
   c. an impairment from other causes such as cerebral palsy, amputations, fractures, burns that cause contractures.
2. The orthopedic impairment adversely affects the educational performance of

the child.

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

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

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

Other Health Impairment

"Other health impairment (OHI)" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:
(a) is due to a chronic or acute health problem e.g., as acquired immune deficiency syndrome, asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, or tuberculosis; and
(b) adversely affects a child's educational performance.

707 KAR 1:280 Section 1 (42)
KRS 157.200 (1) (b)
34 CFR 300.8 (c) (9)

The ARC may determine that the child has "other health impairment" as defined if evaluation information verifies:

1. The existence of a severe health impairment caused by chronic or acute health problems as diagnosed by a licensed medical professional or qualified mental health professional.
2. The diagnosis and nature of the health impairment.
3. The affect of the impairment resulting in:
   a. Limited **strength** (maintenance and endurance of fine and gross motor skills/activities); **OR**
   b. Limited **vitality** (endurance in an activity e.g., duration, intensity, and frequency over time); **OR**
   c. Limited **alertness** (attentional, maintenance of focus on tasks e.g., short attention span; highly distractible).
4. The other health impairment adversely affects the educational performance of the child.
5. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

For <u>initial</u> eligibility, the ARC requires an educationally relevant medical evaluation. For reevaluation, the ARC may determine if the medical statement is required. The educationally relevant medical evaluation is completed by a licensed medical professional or a qualified mental health professional and verifies:

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

Speech or Language Impairment

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

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

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

The ARC determines that the child has a "speech/language disability" as defined if evaluation information verifies:

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

<u>Speech as a Related Service</u>

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

Traumatic Brain Injury

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

(e) reasoning;
(f) abstract thinking;
(g) judgment;
(h) problem-solving;
(i) sensory, perceptual, and motor abilities;
(j) psychosocial behavior;
(k) physical functions;
(l) information processing; and
(m) speech.

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

The ARC determines that the child has a "traumatic brain injury" as defined if evaluation information verifies:

1. The existence of a traumatic brain injury and the diagnosis and extent of injury, including the possible affect on educational performance.
2. Educationally relevant evaluation data verifies impairment in at least one or more of the identified areas (see above).
3. Brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not considered a traumatic brain injury in accordance with this definition.
4. The brain injury has an adverse affect on educational performance.
5. The child is not determined to be eligible if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet eligibility criteria.

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

1. the existence of a traumatic brain injury caused by chronic or acute health problems;
2. the diagnosis and extent of the brain injury; and
3. the possible affect of the impairment on educational performance.

See the Technical Assistance Manual on Traumatic Brain Injury

Visual Impairment

"Visual impairment (VI)" means a child has a vision loss, even with correction, that:
(a) requires specialized materials, instruction in orientation and mobility, Braille, visual efficiency, or tactile exploration;
(b) has an adverse affect on the child's educational performance; and
(c) meets the following:
1. the child has a visual acuity with prescribed lenses that is 20/70 or worse in the better eye; or
2. the child has a visual acuity that is better than 20/70 and the child has one (1) of the following conditions:
a. a medically diagnosed progressive loss of vision;
b. a visual field of 20 degrees or worse;
c. a medically diagnosed condition of cortical blindness; or
d. a functional vision loss.

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

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

KRS 157.200 (1) (j)

The ARC determines that a child has the disability of "visual impairment" if evaluation data verifies:

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

Evaluation Procedures for Children with Specific Learning Disabilities

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

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

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

KRS 157.200 (1) (f)

ARC Membership for Determining a Specific Learning Disability

Any ARC convened to discuss a child with a suspected or documented specific learning disability shall be collectively qualified to:
(a) conduct, as appropriate, individual diagnostic assessments in the areas of speech and language,

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

707 KAR 1:310 Section 2

Prior to the ARC meeting, the ARC Chairperson selects the appropriate members to invite according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**. The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to attend the ARC Meeting.

If a member of the ARC can not attend the meeting, or the attendance of the member is not necessary for the purpose of the ARC, the committee member may be excused from the ARC meeting (see the Excusal Form in **PROCEDURAL SAFEGUARDS RESOURCES**) if:
a) the parent(s) and SCPS mutually agree;
b) the decision is documented in writing; and
c) the determination is made prior to the ARC meeting.

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

The determination of whether a child suspected of having a specific learning disability is a child with a disability and whether the specific learning disability adversely affects educational performance shall be made by the child's ARC. The ARC shall also include other professionals, relative to the area(s) of concern, such as a school psychologist, speech-language pathologist, or educational specialist.

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

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

<u>Eligibility Determination</u>

For a child suspected of having a specific learning disability, the ARC must consider, as part of the evaluation, data that demonstrates that:
(a) prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, including that the instruction was delivered by qualified personnel; and
(b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parent.

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

The ARC utilizes the System of Interventions (SoI) to provide support to meet the diverse learning and behavioral needs of students. See **Prior to a Referral for Special Education Assessment** in **EVALUATION PROCEDURES**. The ARC considers the

data collected through the SoI to determine if a student may have a Specific Learning Disability.

> The ARC may determine a child has a specific learning disability if:
> (a) 1. The child is provided with learning experiences and instruction appropriate for the child's age or state-approved grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303; and
> 2. The child does not achieve adequately for the child's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:
> a. oral expression;
> b. listening comprehension;
> c. written expression;
> d. basic reading skills;
> e. reading fluency skills;
> f. reading comprehension;
> g. mathematics calculation; or
> h. mathematics reasoning.
> (b) The child fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303 in one or more of the areas identified in 707 KAR 1:310 Section 2 (3) when assessed based on the child's response to scientific, research-based intervention; or
> (c) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development, that is determined by the ARC to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 707 KAR 1:300, Section 4.
>
> 707 KAR 1:310 Section 2 (3)
> 34 CFR 300.309 (a) (1)

The ARC applies the eligibility criteria and follows the steps for **ARC REVIEW OF STUDENT PERFORMANCE INFORMATION** in procedures for **EVALUATION** to determine if a student meets eligibility for a specific learning disability. A student has a "specific learning disability" if evaluation information verifies each of the following:

1. The student is provided with learning experiences and instruction appropriate for the student's age or state-approved grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303; and
2. The child does not achieve adequately for the student's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:
   a. Oral expression;
   b. Listening comprehension;
   c. Written expression;
   d. Basic reading skills;
   e. Reading fluency skills;
   f. Reading comprehension;
   g. Mathematics calculation; or
   h. Mathematics reasoning.
3. The student fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies in one or more of the areas (identified above) when assessed based on the student's response to scientific, research-based intervention; and/or
4. The student exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development

determined by the ARC to be relevant to the identification of a specific learning disability, using appropriate assessments.

> The ARC shall not identify a child as having a specific learning disability if deficits in achievement are primarily the result of:
> (a) a visual, hearing, or motor impairment;
> (b) a mental disability as defined in 707 KAR 1:280 (37);
> (c) emotional-behavioral disability;
> (d) cultural factors;
> (e) environmental or economic disadvantage; or
> (f) limited English proficiency.
>
> 707 KAR 1:310 Section 2 (4)
> 34 CFR 300.309 (a) (3)

The ARC determines a student is not a student with a specific learning disability if the determinant factor for that eligibility determination is a lack of instruction in reading or math, or limited English proficiency; and the student does not otherwise meet eligibility criteria.

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

1. a visual, hearing, or motor impairment;
2. mental disability;
3. emotional-behavioral disability; or
4. environmental, cultural, or economic disadvantage.

<u>Aptitude/Achievement Discrepancy</u>

SCPS may use the aptitude/achievement discrepancy tables in the Kentucky Learning Disability Guidelines, 1993, updated, to determine eligibility for a specific learning disability; the ARC may also use the data gathered during the SoI process to consider in the SLD eligibility determination.

See KDE Memo, March, 2002, Reevaluation of Students with Specific Learning Disabilities.

<u>Written Documentation of a Specific Learning Disability</u>

> An ARC shall develop documentation of a specific learning disability. This documentation shall contain a statement of:
> (a) whether the child has a specific learning disability;
> (b) the basis for making that determination;
> (c) the relevant behavior noted during the observation;
> (d) the relationship of that behavior to the child's academic functioning;
> (e) the educationally relevant medical findings, if any;
> (f) whether the child does not achieve commensurate with the child's age and ability;
> (g) whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas described in 707 KAR 1:310 Section 2 (3), that require special education and related services; and
> (h) the determination of the ARC concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; environmental, cultural factors; economic disadvantage; or limited

English proficiency on the child's achievement level; and
(i) the instructional strategies used and the student-centered data collected based on the child's response to scientific, research-based intervention.

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

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

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

The ARC develops a learning disability written report/eligibility form that contains statements verifying:

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

The ARC documents on the Conference Summary and the written report/eligibility form regarding the policies regarding:

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

Each ARC member shall certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusions, the team member shall submit a separate statement presenting the member's conclusions.

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

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

INDIVIDUAL EDUCATION PROGRAM

RESPONSIBILITY FOR SERVICES

An LEA shall ensure that an IEP is developed and implemented for each child with a disability served by that LEA, and for each child with a disability placed in or referred to a private school or facility by the LEA.
707 KAR 1:320 Section 1 (1)
34 CFR 300.323 (a)
34 CFR 300.325 (a)

An IEP shall be in place for all eligible children aged three (3) through five (5).
707 KAR 1:320 Section 1 (7)
34 CFR 300.323 (b)

At the beginning of the school year, an LEA shall have an IEP in effect for each child with a disability within its jurisdiction.
707 KAR 1:320 Section 1 (3)
34 CFR 300.323 (a)

An LEA shall ensure the IEP:
(a) is in effect before specially designed instruction and related services are provided to a child with a disability; and
(b) is implemented as soon as possible following an ARC meeting.
707 KAR 1:320 Section 1 (4)
34 CFR 300.323 (c)

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

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

1. has been evaluated and the ARC members have determined that the child does <u>not</u> meet eligibility for a disability under IDEA according to procedures in **EVALUATION** and **ELIGIBILITY**;
2. has a disability, but that disability does not adversely affect the educational performance of the child according to procedures in **ELIGIBILITY**; or
3. has an IEP, developed within the last 12 months, that meets the needs of the child.

A LEA (or state agency responsible for developing the child's IEP) shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.
707 KAR 1:320 Section 1 (5)
34 CFR 300.103 (c)

"As soon as possible following an ARC meeting" allows delays in implementation that include:

1. meetings held during summer break;
2. developing an IEP for a child who is not yet three (3) years of age;

3. circumstances that require a short delay (e.g., working out transportation arrangements);
4. decisions by the ARC to begin implementation with the next grading period, or other natural break in school instruction; or
5. awaiting parent consent for the initial provision of services.

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

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

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

IEP Accessibility

> An LEA shall ensure that;
> (a) the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service providers who are responsible for its implementation;
> (b) prior to the implementation of the IEP, each implementer is informed of his specific responsibilities related to implementing the child's IEP; and
> (c) the specific accommodations, modifications, and supports are provided for the child in accordance with the IEP.
>
> 707 KAR 1:320 Section 1 (6)
> 34 CFR 300.323 (d) (1-2)

The ARC Chairperson/case manager informs each person responsible for implementation of the IEP of the specific responsibilities related to implementation by asking the implementers to sign an assurance statement (see **IEP RESOURCES**). SCPS provides appropriate training for all teachers who implement IEPs.

IEP Form

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

1. contains the components specified by state and federal laws and regulations, as described in the remainder of these procedures; and
2. facilitates the flow of information for each of the planning phases.

IEP Draft

Is it permissible for an agency to have the IEP completed before the IEP meeting begins?
No. Agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents.

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

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

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

PRESCHOOL TRANSITION

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

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

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

34 CFR 303.148 (b) (1)

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

The DoSE or designee keeps a copy of the transition conference summary and/or IFSP for the SCPS record of the child.

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

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

> Each State must ensure that the obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and an IEP or an IFSP is in effect for the child by that date. If a child's birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.
>
> 34 CFR 300.101 (b)

> An IEP shall be in place for all eligible children aged three (3) through five (5).
>
> 707 KAR 1:320 Section 1 (7)
> 34 CFR 300.323 (b)

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

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

If the parent of a preschool age child chooses to pursue services, SCPS arranges an ARC meeting according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**.

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

1. develops an IEP according to procedures for **IEP**;
2. makes a placement decision according to procedures for **ARC DETERMINATION OF PLACEMENT** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**; and
3. implements the IEP according to procedures for **IMPLEMENTATION AND SERVICE DELIVERY**.

If the parent chooses not to continue services for the eligible child, SCPS involvement in the Early Intervention Program transitional planning process ends. Annually, the DoSE notifies the parent of the availability of preschool special education and related services until the child enters SCPS primary program (see **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT RESOURCES**, FAPE Letter). The DoSE or designee records the parent's decision and child information on the Intake form (see **CHILD FIND RESOURCES**, Intake Form) and enters the information in the Child Tracking System according to **CHILD TRACKING SYSTEM** in procedures for **CHILD FIND**. The Intake Information form and copies of annual notices are filed in the education record of the child.

See **CHILDREN PLACED IN PRIVATE SCHOOLS RESOURCES**, E'Specially DECS, Volume 3, Number 6, November 2, 2007.

Children not Eligible for Preschool Services

> In the case of a child who may not be eligible for preschool services under Part B of the Act, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive.
>
> 34 CFR 303.148 (b) (2) (ii)

If the ARC determines a child does not meet eligibility requirements for special education and related services, the ARC follows procedures for **ELIGIBILITY**. Copies of the Conference Summary and any notices are filed in the education record of the child.

POST-SCHOOL TRANSITION SERVICES

> Transition Services means a coordinated set of activities for a child with a disability that:
> (a) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
> (b) is based on the individual student's needs, taking into account the child's preferences and interests; and
> (c) includes:
> 1. instruction;
> 2. related services;
> 3. community experiences;
> 4. the development of employment and other post-school adult living objectives; and
> 5. if appropriate, acquisition of daily living skills and functional vocational evaluation.
>
> 707 KAR 1:280 Section 1 (62)
> 34 CFR 300.43

Individual Learning Plan

> Beginning with the graduating class of 2012, each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the program of studies, 704 KAR 3:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.
>
> 704 KAR 3:305 (2)

SCPS follows district procedures for developing an Individual Learning Plan (ILP) for all students, prior to entry into high school. The ARC discusses the ILP prior to developing the IEP, including the student's course of study (from the ILP). A student's course of study is a multi-year description of coursework designed to achieve the student's desired postschool goals, from the student's current to anticipated exit year.

The ARC uses information from the student's course of study and other components of the ILP (goals and plans, activities, experiences, awards, and assessments) to develop the IEP. The ILP is updated annually according to SCPS district procedures.

Age Appropriate Assessments for Transition Purposes

By the child's 16th birthday, the IEP shall include:
(a) appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment and where appropriate, independent living skills; and
(b) the transition services (including the course of study) needed to assist the child in reaching these goals.

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

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

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

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

Failure of an Agency (other than the LEA) to Provide Transition Services

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

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

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

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

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

707 KAR 1:320 Section 7 (5)

34 CFR 300.324 (c) (2)

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

Prior to the development, review, or revision of the IEP, the ARC Chairperson selects and notifies ARC members for an ARC Meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to bring data or information about the child to use in developing the IEP. If the IEP will be reviewed or revised, the ARC Chairperson asks the IEP implementers to bring progress data toward the IEP goals and benchmarks/objectives. The information may include oral or written statements of recommendations for priority needs, evaluation results, student progress, present levels, annual goals, benchmarks or objectives, and types of special education and related services. No member of an ARC presents a final IEP.

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

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

A copy of the procedural safeguards notice (including, parent's rights) shall be given to the parents of a child with a disability one (1) time a school year. A copy of the notice shall also be provided to the parent:
(a) upon initial referral or parent request for evaluation;
(b) upon receipt of the first state written complaint;
(c) upon receipt of the first filing of a due process hearing in a school year;
(d) in accordance with the discipline procedures in which a decision is made to remove a student, which constitutes a change in placement, because of a violation of the code of student conduct; and
(e) upon request by a parent.

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

The ARC Chairperson or another ARC member asks the parent if they received a copy of the Procedural Safeguards (parent rights), and asks if the parent has questions or wants a review of the rights (according to **PROCEDURAL SAFEGUARDS**).

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

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

Reaching Consensus

What is a public agency's responsibility if it is not possible to reach consensus on what services should be included in a child's IEP?

1997 IDEA
34 CFR Part 300 Appendix A, Q. 9

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

If the parent and SCPS personnel cannot reach consensus or negotiate a compromise on a component of an initial IEP, the ARC Chairperson documents any disagreement. The ARC Chairperson states the district's position and documents the position on the Conference Summary. The ARC Chairperson reminds the parent of the right of the parent and the district to resolve differences through mediation or due process procedures.

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

If the parent and SCPS personnel cannot reach consensus on a component while reviewing or revising an IEP:

1. The ARC may develop an interim course of action in terms of services to which both parties can agree;
2. The ARC Chairperson advises the parent of the right to resolve differences through the due process procedures;
3. The ARC Chairperson proposes the use of mediation for resolving the difference; and
4. The summary recorder summarizes the points of disagreement and the interim course of action in the Conference Summary.

If the ARC cannot reach consensus on an interim measure, the last agreed upon IEP remains in effect until the disagreement is resolved. The ARC reconvenes at an agreed upon time and date unless mediation or a due process hearing is requested or a complaint is filed according to procedures in **PROCEDURAL SAFEGUARDS**.

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

If the ARC does not complete the IEP at the meeting when initial eligibility is determined, the ARC members schedule a convenient date and time to continue the meeting to complete the IEP. A reconvened meeting is held within 30 calendar days of the eligibility meeting and within 60 school days of the receipt of the parent consent to evaluate, according to **TIMELINES** in procedures for **PROCEDURAL SAFEGUARDS**.

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

Prior to the ARC Meeting to Discuss the IEP

> LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:
> (a) teaching methodology;
> (b) lesson plans;
> (c) coordination of service provision; or
> (d) preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.
>
> 707 KAR 1:340 Section 1 (4)
> 34 CFR 300.305 (b)

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

DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM

> An ARC shall not be required to include information under one component of a child's IEP that is already contained under another component of the child's IEP.
>
> 707 KAR 1:320 Section 5 (6)
> 34 CFR 300.320 (d) (2)

Identifying Information Regarding the Child

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

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

Consideration of Special Factors

> An ARC shall:

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

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

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

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

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

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

Transition Needs and Services

Statement of Transition Service Needs (beginning for students in 8th grade or age 14 and older)

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

707 KAR 1:320 Section 7 (1)

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

Step 3 The ARC reviews the ILP and assessment information and determines the child's unique needs to prepare them for further education, employment, and independent living. The ARC documents the statement of transition service needs in the Present Levels.

Postsecondary Goals

By the child's 16th birthday, the IEP shall include: (a) appropriate, measurable, postsecondary goals based upon age-appropriate transition assessments, related to training, education, employment and where appropriate, independent living skills; and (b) the transition services (including the course of study) needed to assist the child in reaching these goals. 707 KAR 1:320 Section 7 (2) 34 CFR 300.320 (b)

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

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

Step 4 The ARC reviews the ILP, statement of transition service needs, and assessment information to determine how to assist the student in reaching the postsecondary goals. The ARC:

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

Transition Services

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

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

continuing and adult education, adult services, independent living or community participation.

Step 5 If the ARC determines that it is likely that another agency will provide or pay for transition services, the ARC Chairperson documents on the IEP:
a. the agency that may be responsible;
b. the responsibilities of each agency, linkages, or both; and
c. a description of the transition services to be provided.

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

Consent for Release of Information for Transition Services

Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 C.F.R. 300.321 (b)(3). 707 KAR 1:320 Section 3 (4) KRS 160.720 (1) 34 CFR 300.321 (b) (3) 34 CFR 300.622 (b) (2)

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

Student Reaching the age of Majority

At least one year prior to the child reaching age of majority, the IEP shall include a statement that the child has been informed of the child's rights under 707 KAR Chapter 1, and that the rights will transfer to the child upon reaching the age of majority. 707 KAR 1:320 Section 5 (14) 34 CFR 300.320 (c) 34 CFR 300.520

Step 6 At the annual review meeting prior to the student's eighteenth (18th) birthday, the ARC Chairperson gives the parent and the student notice (according to **RIGHTS OF THE ELIGIBLE STUDENT** in procedures for **CONFIDENTIALITY**) that the rights of the parent and access to educational records transfer from the parent to the student upon the student's eighteenth birthday. The IEP recorder documents the statement on the IEP.

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

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

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

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

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

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

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

Step 7 The ARC describes the child's performance in the following areas: general intelligence; communication; academic performance; health, vision, hearing, and motor; social and emotional; and transition by:

a. using student performance data, evaluation information, and progress data;
b. reviewing the curriculum documents to determine the child's performance within the curriculum;
c. indicating the areas in which the student is performing commensurate with peers;
d. determining how the child's disability affects involvement and progress in the POS/curriculum; and
e. determining the child's unique needs in order to prepare them for further education, employment, and independent living.

Developing Measurable Annual Goals, Including Benchmarks or Objectives

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

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

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

a. student strengths and interests
b. amount of time left in school
c. behaviors that appear most modifiable
d. parent, teacher, and student concerns
e. skills needed to make progress towards the student's postsecondary goal(s)

Step 8 Based on the prioritized areas, the ARC writes measurable goals using Kentucky's Learning Goals and Academic Expectations, the Kentucky Program of Studies or SCPS Curricular Documents.

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

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

Cross Reference with Postsecondary Goals

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

State Performance Plan (SPP)
Indicator 13

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

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

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

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

Step 9 For the IEP beginning when the student turns 16 years old, the ARC indicates which postsecondary goal each annual goal supports.

Methods of Measurement

An IEP shall include a statement of:
(a) how the child's progress toward meeting the annual goals will be measured;

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

Step 10 The ARC determines the methods needed to measure/evaluate the goals, benchmarks and/or objectives to document the student's success and progress toward the annual goals.

Reports to Parents

> An IEP shall include a statement of:
> (b) when periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.
>
> 707 KAR 1:320 Section 5 (13) (b)
> 34 CFR 300.320 (a) (3) (ii)

Step 11 The ARC determines when the parents will be regularly informed of the progress of their child (i.e., mid-term, six weeks, quarterly).

Specifying Implementers

Step 12 The ARC assigns at least one person, listed by title/role, to plan and carry out specially designed instruction to help the child achieve the benchmarks/objectives in the IEP. ARC members select each implementer based on the services described and the qualifications needed for providing the service.

The implementer, who is qualified to deliver instruction, is responsible for instructional planning as well as collecting and maintaining progress information. If the parent agrees to assist in implementation, the ARC members do not assign the parent as sole implementer. (See procedures for **Implementers** in **Implementation and Service Delivery.)**

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

> An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child. There shall also be a statement of the program modifications and supports for school personnel that will be provided for the child to:
> (a) advance appropriately toward attaining the annual goals;
> (b) be involved and make progress in the general curriculum;
> (c) participate in extracurricular and other nonacademic activities; and
> (d) be educated and participate with other children with or without disabilities.
>
> 707 KAR 1:320 Section 5 (8)
> 34 CFR 300.320 (a) (4)

> A LEA shall ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, career and technical education, and other educational services.
>
> 707 KAR 1:290 Section 4

34 CFR 300.107 (a)

Step 13 The ARC reviews the student performance information, the Present Levels, and the goals, benchmarks, and/or objectives to determine the services needed to implement the IEP. The ARC documents the answers to the following questions:

Specially Designed Instruction

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

707 KAR 1:280 Section 1 (58)

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

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

13.A What changes in content, methodology, or instruction are needed for to the student to make progress in the general curriculum?

Supplementary Aids and Services

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

707 KAR 1:280 Section 1 (61)

13.B What aids, services, and supports need to be provided to the student in general education classes or other educational settings to enable the student to be educated with nondisabled students?

Participation in State-Wide Assessment

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

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

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

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

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

707 KAR 1:320 Section 9 (2)

34 CFR 300.320 (a) (6) (i)

13.C What modifications are needed by the student in order to participate in state or district-wide assessment? The ARC documents the decisions on the Accommodations and Modifications Determination Form (see **IEP RESOURCES**).

If the student qualifies for the alternate assessment system, (according to **Determining Certificate of Attainment** in procedures for **IMPLEMENTATION AND SERVICE DELIVERY)** the ARC documents the decision on the IEP.

Related Services

Related services means transportation and such developmental, corrective, or supportive services as are required to assist a child with a disability to benefit from special education. It includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also means school health services and school nurse services, social work services in school, and parent counseling and training. "Related services" do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device. The definition of "related services" does not:

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

707 KAR 1:280 Section 1 (51)

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

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

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

If the ARC determines that a student needs a related service in order to facilitate movement from school to postschool activities (that is, the related service is needed as a transition service), the ARC documents this service as a related service.

Program Modifications and Supports for School Personnel

13.E What specialized training, use of school time, or use of school staff needs to be provided to personnel or parents, on behalf of the student to meet the unique needs?

Beginning Dates, Duration, Frequency, and Location of Services

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

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

Must the IEP specify the amount of services or may it simply list the services to be provided?
The amount of a special education or related service to be provided to a child may be stated in the IEP as a range (e.g., speech therapy to be provided three times per week for 30-45 minutes per session) only if the ARC determines that stating the amount of services as a range is necessary to meet the unique needs of the child. For example, it would be appropriate for the IEP to specify, based upon the IEP team's determination of the student's unique needs, that particular services are needed only under specific circumstances, such as the occurrence of a seizure or of a particular behavior. A range may not be used because of personnel shortages or uncertainty regarding the availability of staff.

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34 CFR Part 300 Appendix A, Q. 35

Step 14 The ARC reviews the services determined and documents:

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

Participation in the General Education Program

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

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

Step 15 The ARC lists the classes and activities in which the child will participate in the:

a. special education environment; and
b. general education environment.

Physical Education

A LEA shall make available to every child with a disability:
(a) physical education services, specially designed if prescribed in the child's IEP; or
(b) the opportunity to participate in the regular physical education program available to children without disabilities.
An LEA is not required to make available physical education services to a child with a disability if:
(a) the child is enrolled full time in a separate facility in which case the agency responsible for the education of the child in that facility shall ensure the child receives appropriate physical education; or
(b) the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

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

Step 16 The ARC members decide, based on data collected and the Present Level descriptions in the IEP, if the child is to receive physical education in the general education classes, with or without supplementary aids and services, or specially designed physical education. If goals/benchmarks/objectives include PE, then the ARC describes the specially designed instruction or adaptive PE in the IEP.

Assistive Technology Services and Devices

> An LEA shall ensure that assistive technology devices or assistive technology services, or both as defined in 707 KAR 1:280 (3) or (4) are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services.
>
> 707 KAR 1:290 Section 7 (1)
> 34 CFR 300.105 (a)

> On a case by case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.
>
> 707 KAR 1:290 Section 7 (2)
> 34 CFR 300.308 (b)

Step 17 The ARC determines if assistive technology devices and/or services are needed to implement the IEP. If the ARC determines the student needs to use the device at home or outside of school, the Chairperson asks the parent to complete a Technology Loan Agreement form (see **IEP RESOURCES**).

Review Date

> An LEA shall ensure that the ARC:
> (a) reviews each child's IEP periodically, but no less than annually, to determine whether annual goals are being achieved; and
> (b) revises the IEP in accordance with 34 CFR 300.324 (b) (1) (ii).
>
> 707 KAR 1:320 Section 2 (6)
> 34 CFR 300.324 (a) (1)

Step 18 The ARC determines the date, within twelve calendar months, to review the IEP.

IEP COMPLETED

> A LEA shall give the parents a copy of the child's IEP at no cost to the parent.
>
> 707 KAR 1:320 Section 4 (8)
> 34 CFR 300.322 (f)

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

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

If the parent does not attend a meeting to review or revise the IEP, the ARC Chairperson sends a copy of the IEP and Conference Summary to the parents, and services begin as indicated in the revised IEP.

The ARC documents attempts to encourage parent participation and attendance at the meeting according to Methods to Ensure Parent Participation in procedures for **PROCEDURAL SAFEGUARDS**.

EXTENDED SCHOOL YEAR

> An LEA shall ensure that extended school year services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis. In making this determination, the LEA shall not:
> (1) limit the provision of extended year services to a particular category(s) of disability; or
> (2) unilaterally limit the type, amount, or duration of those services.
>
> 707 KAR 1:290 Section 8
> 34 CFR 300.106

SCPS provides an extended school year 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. An extended school year program is provided when the recoupment time for a child with a disability exceeds that of similar age peers who are not disabled and who experience the same lapse in instruction.

An extended school year program extends beyond the regular school year for the purpose of maintaining the child's current skill level which, without continued instruction, would be lost or would require an inordinate time to regain those skills. ESY services are not designed to teach new skills, prevent normal amounts of regression, or allow the child to make additional progress, but simply to maintain the student's present level of educational performance of previously learned skills and prevent excessive recoupment time.

Documentation of Regression and Recoupment Time

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

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

If the student did not recoup (score the same as before the break in instruction) the skill(s), the implementers notify the DoSE and ARC Chairperson that ESY may need to be considered for the student.
If there have been no breaks in instruction or analysis of the data fails to validate assessment of recoupment, the IEP implementers submit the following data to determine the need for extended year services:

1. tests and observation data collected over a period of time; and
2. the opinion of professionals.

Consideration of ESY Services for Children Transitioning From 0 to 3 Programs

In the case of a child transitioning from First Steps (Kentucky's Early Intervention System) or from other early intervention programs, the ARC should look at the child's current levels of skills on the IEP, which are carried over from the Individual Family Service Plan (IFSP). The service providers or infant-toddler program the child is coming from will have records on the child's progress on IFSP skills. If records of progress are not available, the ARC must utilize the opinions of professionals, which are based on an individual assessment of the child's regression and recoupment skills. The criterion for eligibility determination for ESY services for the three-year old is the same as the criteria for all children and youth with disabilities.

Since ESY services are focused on maintaining the current levels of skills on the child's IEP and not on general development, it is not necessarily required that the services be delivered in a summer preschool class. Depending on the skills, ESY services could be provided in the home, childcare center, or any other arrangement that could focus on the maintenance of skills.

ARC Analysis of ESY Data

The ARC reviews the progress information, data trends, tests, observations, and professional opinions as presented by the ARC members. The ARC members use the information to answer the following:

a. Did the child experience regression and limited recoupment during the instructional break?
b. Will the child experience significant regression in the absence of an educational program?
c. Will the time to re-learn the lost skills be excessive?
d. Is the child at a critical point in the program?

If the ARC answers yes to any question, the ARC considers extended year programming, and the ARC identifies the goals/benchmarks/objectives and services to be delivered on the Conference Summary and IEP.

If the ARC answers no to all the questions, the child is not eligible for extended year programming. The ARC decision and rationale is documented in the Conference Summary, and the ARC Chairperson gives a copy of the Notice of Proposed/Refused Action to the parent.

The ARC Chairperson, in consultation with the DoSE, makes arrangements for the child to receive extended school year services according to the ARC decision.

ARC Considerations

If ESY services have been provided during the interruption in the educational program, the ARC considers if regression and excessive recoupment time would have been a pattern for the student if ESY services had not been provided.

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

PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

ARC DETERMINATION OF PLACEMENT

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

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

The ARC makes a placement decision based on the IEP of the child and the continuum of placement alternatives. The ARC makes sure that the decision regarding the setting (types of classes, schools or facilities) in which the IEP is to be implemented is made after all parts of the IEP have been completed.

The ARC determines placement in the least restrictive environment for a child with a disability on an annual basis. At least once each calendar year, each ARC reviews and revises the IEP and determines the educational placement of each child with a disability who is receiving special education and related services.

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

LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:
(a) teaching methodology;
(b) lesson plans;
(c) coordination of service provision; or
(d) preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

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

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

ORGANIZING THE MEETING TO MAKE A PLACEMENT DETERMINATION

Prior to making a placement decision, the ARC Chairperson selects and notifies ARC members for an ARC Meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to bring data or information about the child to use in making a placement decision. The ARC Chairperson brings to the meeting information about the continuum of placement alternatives, the types of educational programs and services, academic programs, non-academic services and activities, and extra-curricular activities available to SCPS students.

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

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

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

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

Making a Placement Decision

Current and Complete IEP

> In determining the educational placement of a child with a disability, the LEA shall ensure that the placement decision is made by the ARC in conformity with the least restrictive environment provisions.
>
> 707 KAR 1:350 Section 1 (5)
> 34 CFR 300.116 (a) (2)

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

Continuum of Placement Alternatives

> A LEA shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum shall include the alternative placements of instruction in:
> (a) regular classes;
> (b) special classes;
> (c) special schools;
> (d) home instruction; and
> (e) hospitals and institutions.
>
> 707 KAR 1:350 Section 1 (2-3)
> 34 CFR 300.115 (a), (b) (1)

> The LEA shall make provision for supplementary services to be provided in conjunction with regular class placement.
>
> 707 KAR 1:350 Section 1 (4)
> 34 CFR 300.115 (b) (2)

Selecting a Placement Alternative

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

selects a different alternative and repeats the placement decision-making process.

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

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

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

The continuum of services may extend beyond the geographic boundaries of SCPS.

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

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

If the IEP cannot be implemented in the proposed placement, the ARC decides what modifications can be made to the placement alternative to implement the IEP (see procedures for Modifications to the General Education Environment in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**).

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

Harmful Effects

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

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

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

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

The ARC determines what modifications are necessary to address the harmful effects issues in the placement alternative (see procedures for Modifications to the General Education Environment in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**).

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

Consideration of School the Child would attend if not Disabled

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

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

Step 4: The ARC selects the school the child would attend if not disabled as the place or facility the student will attend school. If the IEP cannot be implemented in that school or facility, the ARC selects a similar level school or location that has the placement alternative selected.

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

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

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

> A LEA shall ensure that all children with disabilities have available to them the variety of educational programs, services and curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, career and technical education, and other educational services.
>
> 707 KAR 1:290 Section 4
> 34 CFR 300.107 (a)

> In providing or arranging for the provision of nonacademic and extracurricular services and activities, a LEA shall ensure that a child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of the child.
>
> 707 KAR 1:350 Section 1 (10)
> 34 CFR 300.117

> A LEA shall take steps, including the provision of supplementary aids and services as determined appropriate and necessary by the child's ARC, to provide all children with disabilities the nonacademic and extracurricular services and activities which give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include: counseling services; athletics; transportation; health services; recreational activities; special interest groups or clubs sponsored by the LEA; referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.
>
> 707 KAR 1:290 Section 5
> 34 CFR 300.107 (b)

SCPS takes steps to provide children who have disabilities equal opportunities for participation in the academic, nonacademic, and extracurricular programs and activities as are available to children without disabilities. SCPS ensures that all children, including children with disabilities, meet the established criteria and eligibility for participation in academic, nonacademic, and extracurricular activities.

Step 5: The ARC discusses the child's participation in academic, nonacademic and extracurricular activities and determines what supplementary aids and services are to be provided for the child to participate with children who are not disabled.

The ARC specifies any conditions, modifications, or adaptations for participation in the general programs and activities with children who are not disabled according to <u>Modifications to the General Education Environment</u> in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

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

<u>Modifications to the General Education Environment</u>

> A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
>
> 707 KAR 1:350 Section 1 (9)
> 34 CFR 300.116 (e)

For each step, the ARC specifies on the Conference Summary any needed changes in

the general education environment to implement the IEP. Changes may include:

1. changing the physical environment (e.g., preferential seating, special lighting);
2. using supplementary aids and services (e.g., large print books);
3. reorganizing staff patterns (e.g., adding a additional adult support, changing teacher assignments);
4. implementing different modes of instruction (e.g., cooperative learning, behavioral instruction, modeling);
5. modifying the curricula (e.g., learning strategies, social skills); or
6. training personnel (e.g., special instruction techniques, positive behavior interventions, strategies, etc.).

Placement Completed

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

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

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

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

> An LEA shall be responsible for ensuring the rights and protections under 707 KAR Chapter 1 are given to children with disabilities referred to or placed in private schools and facilities by that LEA.
>
> 707 KAR 1:290 Section 1 (2)
> 34 CFR 300.146 (b-c)

If the decision of the ARC requires a placement in another public school, private school or facility, or a location other than a SCPS school or facility, the ARC Chairperson contacts the DoSE and requests the DoSE attend an ARC meeting for the consideration of placement alternatives.

Prior to the ARC meeting, the DoSE contacts programs that provide the type of services specified on the IEP. The DoSE inquires regarding:

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

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

school program.

Placement in Private Schools or Facilities

> Prior to a LEA placing a child with a disability in, or referring a child to, a private school or facility, the LEA shall initiate and conduct an ARC meeting to develop an IEP for the child.
>
> 707 KAR 1:320 Section 8 (1)
> 34 CFR 300.325 (a) (1)

> The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
>
> 707 KAR 1:320 Section 8 (2)
> 34 CFR 300.325 (a) (2)

> After a child with a disability is placed in a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA.
>
> 707 KAR 1:320 Section 8 (3)
> 34 CFR 300.325 (b)

> If a private school or facility initiates the meetings, the LEA shall ensure that the parents and LEA staff are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. If a child with a disability is placed by the LEA in a private school or facility, the LEA shall remain responsible for compliance with 707 KAR Chapter 1.
>
> 707 KAR 1:320 Section 8 (4)
> 34 CFR 300.325 (b) & (c)

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

The ARC members follow the procedures for **ARC DETERMINATION OF PLACEMENT** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **CONTRACTUAL PROVISIONS FOR STUDENTS PLACED IN ANOTHER PUBLIC SCHOOL, PRIVATE SCHOOL OR FACILITY** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT** to arrange and provide services.

Residential Placement

> If it is determined necessary by an ARC to place a child with a disability for educational purposes in a private residential educational program, the program, including non-medical care and room and board, shall be provided by the LEA that convened the ARC. An LEA may fulfill its responsibility under this section by providing the services directly or by contracting for those services.
>
> 707 KAR 1:290 Section 2
> 34 CFR 300.104

If the ARC determines a private residential educational program is needed to provide the student FAPE, the ARC Chairperson contacts the DoSE and requests that the

DoSE attend an ARC meeting for the consideration of placement alternatives.

The ARC members follow the procedures for **ARC DETERMINATION OF PLACEMENT** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **CONTRACTUAL PROVISIONS FOR STUDENTS PLACED IN ANOTHER PUBLIC SCHOOL, PRIVATE SCHOOL OR FACILITY** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT** to arrange and provide services.

Placement at KSB or KSD

> Kentucky School for the Deaf and Kentucky School for the Blind, in conjunction with the child's resident LEA, shall ensure that an IEP is developed and implemented for each child with a disability placed in its school by an ARC.
>
> 707 KAR 1:320 Section 1 (2)

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

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

The ARC members follow the procedures for **ARC DETERMINATION OF PLACEMENT** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **CONTRACTUAL PROVISIONS FOR STUDENTS PLACED IN ANOTHER PUBLIC SCHOOL, PRIVATE SCHOOL OR FACILITY** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT** to arrange and provide services.

<u>Transportation to KSB or KSD</u>

> If a child of school age is admitted for resident instruction at the Kentucky School for the Deaf (KSD) or the Kentucky School for the Blind (KSB), the district in which the child resides shall provide transportation to and from the school on a regularly scheduled basis, at weekly intervals while the child is enrolled, either by individual district or in cooperation with other school districts on a regional basis. Students who live more than two hundred (200) miles from the school they attend are not required to go home more than twice each month.
>
> KRS 157.280 (4)

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

> If a child of school age is admitted as a day school pupil for instruction at KSB or KSD, the district in which the child resides may provide transportation to and from the school on a daily basis, either by individual district or in cooperation with other school districts on a regional basis. School districts providing this transportation shall be reimbursed from the transportation fund of the foundation program at the same rate per trip as that which is calculated under subsection (4) of this section.
>
> KRS 157.280 (5)

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

Other State Agencies Responsible for Education

> State agencies charged with the responsibility of providing educational services to children with disabilities within their care shall provide those services in accordance with 707 KAR Chapter 1.
>
> 707 KAR 1:290 Section 1 (3)
> 34 CFR 300.118

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

The ARC members follow the procedures for **ARC DETERMINATION OF PLACEMENT** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

If the ARC places a student in another public school, private school, or facility, the DoSE follows procedures for **CONTRACTUAL PROVISIONS FOR STUDENTS PLACED IN ANOTHER PUBLIC SCHOOL, PRIVATE SCHOOL OR FACILITY** in **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT** to arrange and provide services.

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

> An LEA that places or refers a child with a disability in a private school shall ensure that the child:
> (a) is provided specially designed instruction and related services in conformance with an IEP that meets the standards of 707 KAR Chapter 1, and at no cost to the parents;
> (b) is provided an education that meets the standards of the LEA including general curriculum standards; and
> (c) has all the rights of any child with a disability served by the LEA.
>
> 707 KAR 1:320 Section 8 (5)
> 34 CFR 300.146

If a child with a disability is placed in a program outside of SCPS, the DoSE makes sure:

1. services are provided in conformance with the IEP;
2. services are provided at no cost to the parent;
3. standards that apply to education provided by state and local education agencies

are met;
4. the child has all the rights of any child with a disability served by SCPS;
5. during the time that the placement in another program is being developed, SCPS is responsible for the provision of FAPE to the child; and
6. implementation of the terms specified in the contract or agreement are monitored.

Transportation

> If a local school district's admissions and release committee determines that a child requires placement in a special education program operated by another county or independent district or private organization, the resident local school district shall assume responsibility for the payment of the costs incurred in educating the child. The school board of the school district in which any child resides shall pay for his transportation to and from the program in the other school district or the private organization. However, if the school board of the other district or the private organization providing the program also provides transportation, the cost of transportation shall be included in the total cost.
>
> KRS 157.280 (2)

Attendance

> If a local school district, under the provisions of KRS 157.360 (6) enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.
>
> 702 KAR 7:125 Section 11

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

1. provide special education and related services as specified on the IEP including:
   a. each implementer designs and initiates instructional plans for accomplishing IEP goals, benchmarks/objectives;
   b. each implementer monitors and collects documentation of student progress; uses measurement techniques specified in the IEP to measure progress of the goals, benchmarks/objectives; and reports progress toward achievement of goals, benchmarks/objectives on an on-going basis, at least as often as reported for all students;
2. make sure that the child and parent are afforded all rights and protections according to 707 KAR Chapter 1;
3. notify SCPS of the need to initiate and conduct ARC meetings;
4. monitor and evaluate the IEP at intervals specified on the IEP;
5. forward written results of monitoring and evaluation of the IEP to the parent and SCPS;
6. participate in ARC meetings convened by SCPS;
7. make sure that special education and related services are provided by qualified personnel; and
8. monitor and report attendance to SCPS at the close of each month.

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

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

Payment for Services

> If payment for services under 707 KAR Chapter 1 is to be provided by an agency other than the LEA, the LEA shall ensure the services are provided without delay even if there is a delay in the payment for those services.
>
> 707 KAR 1:290 Section 1 (4)
> 34 CFR 300.103 (c)
> KRS 157.280 (1)

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

If the child is placed in a parochial school, SCPS uses federal funds to pay for the cost of the placement. (See **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT RESOURCES**, KDE Letter, December 9, 1997, Paying for educational services in an out of state parochial school.)

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

CHANGE IN ELIGIBILITY FOR FAPE

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

A change in eligibility for FAPE includes:

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

Initiation of Special Education and Related Services

The ARC initiates special education and related services according to **DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM** in procedures for **IEP** and **ARC DETERMINATION OF PLACEMENT** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

Release from Special Education and Related Services

> An LEA shall evaluate a child with a disability in accordance with 707 KAR 1:300 Section 4 before

determining that the child is no longer a child with a disability.

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

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

The ARC uses the evaluation data, information from the most recent IEP, and information from the current placement to determine what services, if any, are needed for the child to receive full-time general education services in the general education environment. The ARC may discuss any services needed to facilitate progress of the child in the general education program, including those services that are available to children who are not disabled and who are enrolled in the general education program.

The ARC determines that the child may be released when the child:

1. can function in the general education program without special education and related services; **and**
2. has reached an educational achievement level which falls within the expected performance range for similar age peers who do not have disabilities; that is, the disability no longer adversely affects their education; **or**
3. is no longer identified as educationally disabled (e.g., student who has had surgery to correct vision or hearing problems, students whose misarticulations have been corrected).

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

1. The current functioning level of the child within the performance range of similar age peers without disabilities.
2. The child has strategies, skills, and behaviors needed to achieve education expectations and to cope with the demands of the general education program and environment.
3. The general education program can provide accommodations to the child through services available to similar age peers in the general education program who are not disabled.

To determine the general education environment for the child, the ARC identifies the grade level and school the child would attend if not disabled. The DoSE or principal arranges for each child that an ARC releases to return to the location the child would have been if not determined disabled and in need of special education and related services.

The ARC decisions are documented on the Conference Summary. The ARC Chairperson gives a copy of the Conference Summary to the parent and to each of the general instructional personnel who will be serving the child and files a copy in the student's record.

The ARC Chairperson notifies the DoSE through the **CHILD TRACKING SYSTEM** in

CHILD FIND and places the record on inactive status.

Graduation with a Diploma

"Graduates" means a child completes the established program of study leading to the receipt of a diploma and leaves the school system. The SCPS Board of Education grants a youth with a disability a diploma who has met the State Board of Education criteria standards. Each youth with a disability who completes the secondary program is given the opportunity to participate in graduation ceremonies with peers who are not disabled.

> The LEA shall not be required to conduct an evaluation as described in 707 KAR 1:300 Section 4 before termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age of eligibility for a free, appropriate public education.
>
> 707 KAR 1:300 Section 4 (20)
> 34 CFR 300.305 (e) (2)
>
> For students who graduate or age out of the program, the LEA shall provide the child with a summary of the child's academic achievement and functional performance including recommendations on how to assist the child in meeting the child's postsecondary goals.
>
> 707 KAR 1:300 Section 4 (21)
> 34 CFR 300.305 (e) (3)

Prior to the annual review date, the ARC Chairperson schedules an ARC to discuss a change in services/placement due to graduation and assigns a SCPS staff person to prepare a summary, in consultation with the student, of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. SCPS staff provides the student with a copy of the summary before graduation.

At the annual review meeting prior to a youth's expected graduation date, the ARC:

1. reviews the youth's progress in the current program;
2. reviews, and revises if appropriate, the IEP and transition plan;
3. checks earned credits in the youth's education record against the requirements established by the State Board of Education to determine if the youth meets, or is scheduled to complete at the conclusion of the coming school year, the requirements for graduation;
4. determines any support or assistance the youth needs for successful participation in the commencement ceremonies (diploma in Braille, wheelchair access, etc.); and
5. provides the student with a copy of the summary of performance including any documentation the student may need to assist in meeting postsecondary goals..

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

The ARC Chairperson notifies the DoSE through the **CHILD TRACKING SYSTEM** procedures in **CHILD FIND** and places the record on inactive status.

Completion of Certificate Program

> An LEA shall evaluate a child with a disability in accordance with 707 KAR 1:300 Section 4 before determining that the child is no longer a child with a disability.
>
> 707 KAR 1:300 Section 4 (20)
> 34 CFR 300.305 (e)

Prior to a student's program completion, the ARC completes a **REEVALUATION** according to **EVALUATION** Procedures.

> For students who graduate or age out of the program, the LEA shall provide the child with a summary of the child's academic achievement and functional performance including recommendations on how to assist the child in meeting the child's postsecondary goals.
>
> 707 KAR 1:300 Section 4 (21)
> 34 CFR 300.305 (e) (3)

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

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

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

1. reviews the youth's progress in the current program;
2. reviews, and revises if appropriate, the IEP and transition plan;
3. determines any support or assistance the youth needs for successful participation in the commencement ceremonies;
4. determines reevaluation needs;
5. documents the decisions of the committee in the Conference Summary; and
6. provides the student with a copy of the summary of performance including any documentation the student may need to assist in meeting postsecondary goals.

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

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

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

The ARC Chairperson notifies the DoSE through the **CHILD TRACKING SYSTEM**

procedures in **CHILD FIND** and places the record on inactive status.

Exceeding the Age of Eligibility for FAPE

"Aging out" means the age of the youth has reached the mandated service age for a free appropriate public education and the school district is no longer required to provide special education and related services to the youth. This is a change in eligibility for FAPE.

> The LEA shall not be required to conduct an evaluation as described in 707 KAR 1:300 Section 4 before termination of a child's eligibility due to graduation from secondary school with a regular diploma or due to exceeding the age of eligibility for a free, appropriate public education.
>
> 707 KAR 1:300 Section 4 (20)
> 34 CFR 300.305 (e) (2)
>
> For students who graduate or age out of the program, the LEA shall provide the child with a summary of the child's academic achievement and functional performance including recommendations on how to assist the child in meeting the child's postsecondary goals.
>
> 707 KAR 1:300 Section 4 (21)
> 34 CFR 300.305 (e) (3)

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

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

1. reviews the youth's progress in the current program;
2. reviews, and revises if appropriate, the IEP and transition plan;
3. determines the last date of services based on the youth's 21st birthday; and
4. provides the student with a copy of the summary of performance including any documentation the student may need to assist in meeting postsecondary goals.

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

The ARC Chairperson notifies the DoSE through the **CHILD TRACKING SYSTEM** procedures in **CHILD FIND** and places the record on inactive status.

Withdrawal Prior to Program Completion

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

When a youth age 16 or older who has been receiving special education and related services withdraws from school, the counselor notifies the special education teacher of

the youth's withdrawal action. The counselor, Principal and DPP follow the district procedures for any child who withdraws from school.

The ARC Chairperson notifies the DoSE through the **CHILD TRACKING SYSTEM** in procedures for **CHILD FIND** and places the student record on inactive status.

Annually, the DoSE sends a letter to the parent, or the youth if emancipated, of the availability of services (see **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT RESOURCES**, FAPE Letter for Withdrawal).

Shortened School Day

> The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age who is enrolled and in regular attendance in a state-supported program for exceptional children.
>
> KRS 159.030 (1) (f)

A shortened school day may be a change in setting for a student with a disability. The ARC may apply the exemption from compulsory attendance to a child with a disability whose condition warrants less than a full day of attendance. The ARC follows SCPS procedures to review and revise, as appropriate, the IEP. If the ARC determines the child needs a shortened school day, the ARC Chairperson notifies the DoSE. The DoSE requests the SCPS Board of Education (in closed session) to grant the exemption from full day attendance for the child. If the Board approves the exemption, the DoSE notifies the Division of Exceptional Child Services of the local board decision using the DECS-provided form.

See **IMPLEMENTATION AND SERVICE DELIVERY RESOURCES**, Special Education Waiver Process.

TRANSFER STUDENTS

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

Students Who Transfer to SCPS from a Kentucky Public School District

> If a child with a disability transfers between school districts within the same academic year within Kentucky, and had an IEP in effect in Kentucky, the child shall be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the LEA adopts the previous IEP or develops, adopts and implements a new IEP.
>
> 707 KAR 1:320 Section 6 (1)
> 34 CFR 300.323 (e)

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

transfer.

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

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

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

Students Who Transfer to SCPS from Outside of Kentucky

> If a child with a disability transfers between school districts within the same academic year from outside the state, and had an IEP in effect in another state, the child shall be provided a free, appropriate public education including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the LEA conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child meets the eligibility criteria as defined in 707 KAR 1:280.
>
> 707 KAR 1:320 Section 6 (2)
> 34 CFR 300.323 (f)

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

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

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

The ARC of the school in which the child enrolls assumes responsibility for educational services. The ARC conducts an evaluation, if necessary, and develops, adopts, and

implements the new IEP if the child meets eligibility guidelines according to procedures for ELIGIBILITY.

Students who Transfer During the Evaluation Process

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

> The sixty (60) school-day timeline shall not apply if the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and parent and the LEA agree to a specific time when the evaluation shall be completed.
>
> 707 KAR 1:320 Section 2 (5) (a)
> 34 CFR 300.301 (e)

Upon receiving the records of a student who is transferring to SCPS during the evaluation process, SCPS staff reviews the record and contacts the previous school to coordinate the completion of the evaluation. SCPS staff reviews the status of the child's evaluation and determines if the sixty (60) school day timeline can be met. SCPS staff discuss with the parent the progress of the child in the evaluation process and work together to agree on the timeline for completion of the evaluation.

SCPS staff follow **Transmittal of Educational Records for Transfer Students** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

Transmittal of Educational Records for Transfer Students

> To facilitate the transition of a child who transfers, the receiving LEA shall take reasonable steps to obtain the child's records, including the IEP, supporting documents, and any other records, including discipline records, relating to the provision of special education and related services. The previous LEA shall take reasonable steps to promptly respond to such requests from the receiving LEA.
>
> 707 KAR 1:320 Section 6 (3)
> 34 CFR 300.323 (g)

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

The intake person receiving the request for information records the following information (see **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT RESOURCES**, Transfer Checklist):

1. date of request;
2. name of the child (first, middle, last, and nickname);
3. date of birth;
4. name and address of person making request and the agency they are representing;
5. information requested; and

6. preferred method of information transfer (e.g., FAX, telephone, mail, etc.).

Upon receipt of notification that a child has transferred to another school district, SCPS personnel send copies of the education record to the receiving school district or educational agency according to district procedures. A copy of the request for information is filed in the education records of the child and recorded on the Record of Disclosure.

Copies (not originals) of the following special education records are sent to the requesting district/agency:

1. Consent to Evaluate/Reevaluate
2. Consent for Special Education and Related Services
3. Current Conference Summary
4. Current IEP, student performance information, and data summaries
5. Current Assessment Report and Eligibility Determination
6. Initial Assessment Referral, Written Assessment Report, and Eligibility determination
7. Consent to bill Medicaid, if appropriate

The ARC Chairperson notifies the DoSE through the **CHILD TRACKING SYSTEM** in procedures for **CHILD FIND** and places the record on inactive status.

Placement when the Current IEP is not Available

If the child's current IEP is not available, the SCPS representative enrolls the child and places the child in an age-appropriate general education program according to SCPS Board Policy.

IMPLEMENTATION AND SERVICE DELIVERY

IMPLEMENTATION OF THE IEP

> At the beginning of the school year, an LEA shall have an IEP in effect for each child with a disability within in its jurisdiction.
>
> 707 KAR 1:320 Section 1 (3)
> 34 CFR 300.323 (a)

> An LEA shall ensure the IEP:
> (a) is in effect before specially designed instruction and related services are provided to a child with a disability; and
> (b) is implemented as soon as possible following an ARC meeting.
>
> 707 KAR 1:320 Section 1 (4)
> 34 CFR 300.323 (c)

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

> A LEA (or state agency responsible for developing the child's IEP) shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying the special education and related services to the child is being determined.
>
> 707 KAR 1:320 Section 1 (5)
> 34 CFR 300.103 (c)

"As soon as possible following an ARC meeting" allows delays in implementation that include:

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

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

Implementers

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

The implementer, who is qualified to deliver instruction to encompass the IEP components of SDI, SAS, Support for School Personnel, and Related Services, is

responsible for instructional planning as well as collecting, monitoring, and maintaining student progress information. Each person responsible for IEP implementation:

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

Case Manager

A "case manager" means a teacher who is assigned the responsibility of managing student records and is assigned by the Principal and/or DoSE. The case manager is not required to be assigned as the implementer of the IEP, but may be an implementer on the IEP. The role of the case manager includes:

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

The Principal and/or DoSE and/or case manager ensure that each implementer is made aware of their responsibilities for service delivery and documentation of student progress toward measurable goals and objectives/benchmarks. See also **IEP Accessibility** in procedures for **IEP**.

The implementer ensures that, no less than annually, progress data is reported to the ARC. The implementer collects and analyzes student progress data to determine if the student is making progress according to the expected criteria designated for the measurable goals, benchmarks/objectives for which the implementer is responsible. If the student is making expected progress, the implementer continues the instructional process.

When IEP implementers review the student progress data and the data indicates the student is falling behind or exceeding a goal(s), the implementer communicates with the case manager, who notifies the ARC Chairperson to schedule an ARC meeting to review the progress of the student. The ARC follows **Review and Revision of IEP** in procedures for **IMPLEMENTATION AND SERVICE DELIVERY**.

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

Paraprofessionals as Implementers

> "Teacher's aide" means an adult school employee who works under the direction of the professional administrative and teaching staff in performing, within the limitations of his or her training and competency, certain instructional and noninstructional functions in the school program including, but not limited to, clerical duties, tutoring individual pupils, leading pupils in recreational activities, conducting pupils from place to place, assisting with classroom instruction as directed by the teacher, aiding the school librarian, and preparing and organizing instructional materials and equipment.
>
> KRS 161.010

> "Noninstructional teacher's aide" means an adult who works under the direct supervision of the teaching staff in performing noninstructional functions such as clerical duties, lunch room duties, leading pupils in recreational activities, aiding the school librarian, preparing and organizing instructional material and equipment and monitoring children during a noninstructional period. Noninstructional teachers' aides employed on a full-time basis shall possess skills necessary to perform their duties and shall meet the requirements established in KRS 161.011 and 160.380 (5).
>
> KRS 161.044

> The various boards of education of the Commonwealth of Kentucky, and the principals of the public schools, may use teacher's aides in supervisory capacities, such as playground supervision, hallway supervision, lunchroom and cafeteria supervision, and other like duties, including, but not limited to, recreational activities and athletic events, relating to the supervision and control of the conduct of the pupils; and while so engaged, such teacher's aides shall have the same authority and responsibility as is granted to and imposed by law upon teachers in the performance of the same or similar duties.
>
> KRS 161.180

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

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

Instructional Planning for Service Delivery

The role of the case manager is to communicate with each IEP implementer how services will be provided as designed by the ARC. Measurable annual goals, objectives/benchmarks, and services listed on the IEP are addressed in the instructional planning of the implementer. The implementer is responsible for monitoring progress toward the measurable goals and services.

The implementer is also responsible to provide evidence of student progress by maintaining data. The implementer uses the methods of measurement identified for each measurable goal, objectives/benchmarks. The student progress toward the achievement of each measurable goal, objectives/benchmarks is reported to the ARC not less than annually.

Implementation for Service Delivery

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

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

Supervision of IEP Implementation

The ARC Chairperson ensures that SCPS staff is responsible for the supervision and implementation of the IEP by reviewing lesson plans, reviewing tracking system reports according to **CHILD TRACKING SYSTEM** procedures in **CHILD FIND**, and by conducting record reviews.

If the ARC Chairperson finds that an IEP is not being implemented, the ARC Chairperson contacts the DoSE and they develop an appropriate plan of action.

See **IMPLEMENTATION AND SERVICE DELIVERY RESOURCES, Resource Manual for Educationally Related Occupational Therapy and Physical Therapy in Kentucky Public Schools**, September 2006.

Prior to the ARC Meeting to Discuss the IEP

LEA staff shall not be limited by 707 KAR Chapter 1, from having informal, or unscheduled conversations on issues which may include:
(a) teaching methodology;
(b) lesson plans;
(c) coordination of service provision; or
(d) preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later ARC meeting.

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

Prior to the ARC meeting to discuss the IEP, teachers, related services providers, and the school psychologist may meet to gather and review existing data collected about the child and draft recommendations to present for consideration to the ARC.

ORGANIZING THE MEETING TO REVIEW and/or REVISE THE IEP (ANNUAL REVIEW)

Prior to the meeting to review/revise the IEP, the ARC Chairperson selects and notifies ARC members for an ARC Meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL**

SAFEGUARDS) to bring a written summary of progress which is reviewed at the ARC meeting and information about the child to use in reviewing and revising the IEP.

A member of the ARC may be excused from attending the meeting according to procedures for **EXCUSAL FROM ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**.

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

Review of the IEP

An LEA shall ensure that the ARC
(a) reviews each child's IEP periodically, but no less than annually, to determine whether annual goals are being achieved, and
(b) revises the IEP in accordance with 34 CFR 300.324 (b) (1) (ii):
1. any lack of expected progress toward the annual goals;
2. any lack of expected progress in the general curriculum, if appropriate;
3. the results of any reevaluation;
4. information about the child provided by or to the parents;
5. the child's anticipated needs;
6. and other matters.

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

The ARC meets to review the IEP no less than annually (see **Review Date** in **IEP Procedures**). The annual review of the IEP occurs within twelve calendar months of the date when the IEP was developed. If, during the twelve month implementation of the current IEP, the case manager or implementer notifies the ARC Chairperson that the student is falling behind or exceeding their measurable IEP goals, the ARC Chairperson schedules an ARC meeting to discuss the progress of the student.

The ARC members use student performance data, evaluation information, and progress data to determine if the student made progress in the general curriculum and toward the measurable goals, benchmarks and objectives. The ARC members considers student performance data, evaluation information and the progress data maintained by each implementer and documents discussions on the ARC Conference Summary. The ARC reviews and analyzes the following:

1. the degree to which the student has made expected progress toward academic achievement and functional performance in the general curriculum;
2. the results of any reevaluations;
3. information about the child provided by or to the parents;
4. the child's anticipated needs; and
5. other matters as determined by the ARC.

Based on the review of student progress information, the ARC members:

1. revise the current IEP;
2. develop a new IEP according to **DEVELOPING THE IEP** in procedures for **IEP**; or

3. release the student from special education according to **Release from Special Education and Related Services** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**.

Based on the review of the IEP, the ARC determines if the student still needs specially designed instruction and related services. If the need still exists, the ARC revises the IEP and determines the educational placement.

If the ARC determines the student no longer needs special education services, the ARC discusses the need for a reevaluation according to **REEVALUATION** in **EVALUATION** procedures. If additional information is needed, the ARC plans for the reevaluation, develops an IEP for the reevaluation period, and schedules another ARC meeting. If the ARC determines no additional reevaluation data is needed, the ARC writes the Reevaluation Report according to **REEVALUATION** in **EVALUATION** procedures, and releases the student according to **Release from Special Education and Related Services** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT.**

IEP ACCOUNTABILITY

> The LEA shall provide specially designed instruction and related services to each child with a disability in accordance with his IEP and shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks in the IEP.
>
> 707 KAR 1:320 Section 9 (1)

> "Good faith effort" means the state of mind denoting honesty of purpose, freedom from intention to defraud, and being faithful to one's duty or obligation.
>
> Black's Law Dictionary 6th Ed.

SCPS staff, individual schools, and teachers make good-faith efforts to assist the child in making progress toward the measurable goals and benchmarks and/or objectives, including those related to transition services. In addition, teachers and other personnel who carry out portions of the child's IEP are informed about the content of the IEP and their responsibility regarding its implementation according to **IEP Accessibility** in procedures for **IEP**.

> The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made.
>
> 707 KAR 1:320 Section 9 (3)

If the parents disagree with the decision(s) of the ARC, the ARC Chairperson informs the parents of the use of mediation, complaint, and due process procedures according the appropriate procedures in **PROCEDURAL SAFEGUARDS**.

GRADUATION AND PROGRAM COMPLETION

SCPS issues the same high school diploma to each student with a disability who meets the required graduation criteria and standards as that issued to student without

disabilities who meet the same criteria. The ARC plans an appropriate course of study leading to graduation and a diploma for a student no later than age fourteen (14) according to **Post-School Transition Services** in procedures for **IEP**.

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

Graduation with a Diploma

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

Determining Certificate of Attainment

A student with a disability who meets the criteria for participation in alternate assessment is issued a certificate of attainment upon completing a program designed by the ARC. A student is eligible for an alternate assessment and a certificate of attainment if the ARC determines that all of the following criteria are met:

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

The ARC documents the decisions on the Participation Guidelines for the Alternate Assessment System (see **IMPLEMENTATION AND SERVICE DELIVERY RESOURCES**).

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

See **IMPLEMENTATION AND SERVICE DELIVERY RESOURCES**, Questions and Answers on Certificate of Attainment and Standard Diploma, DECS, November 2007.

CASE LOADS AND CLASS SIZES

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

Case Load for Special Class

> "Case load for special classes" means the number of children with disabilities assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services in a special class setting.
>
> 707 KAR 1:280 Section 1 (7)

> An LEA shall provide special education for each child with a disability in accordance with the following maximum caseloads for special classes:
> (a) emotional-behavior disability is eight (8);
> (b) functional mental disability is ten (10);
> (c) hearing impairment is six (6);
> (d) mild mental disability for primary is fifteen (15);
> (e) multiple disabilities is ten (10);
> (f) orthopedic impairment is sixteen (16);
> (g) other health impairment is sixteen (16);
> (h) specific learning disability for primary is ten (10) and for secondary is fifteen (15); and
> (i) visual impairment is ten (10).
>
> 707 KAR 1:350 Section 2 (1)

A "special class" means that more than fifty per cent (50%) of the children are served in the class more than fifty per cent (50%) of the school day. The class size requirement of a special class is the same as the caseload requirement.

Case Load for Resource Class

> Caseload for resource teachers shall refer to the maximum number of student records a teacher may be assigned. A LEA shall make those assignments based on the following:
> (1) emotional-behavioral disability is fifteen (15);
> (2) functional mental disability is ten (10);
> (3) hearing impairment is eight (8);
> (4) mild mental disability for primary is fifteen (15) and for secondary is twenty (20);
> (5) multiple disabilities is ten (10);
> (6) orthopedic impairment is twenty (20);
> (7) other health impairment is twenty (20);
> (8) specific learning disability for primary is fifteen (15) and for secondary is twenty (20);
> (9) visual impairment is ten (10); and
> (10) Speech language pathologist caseload limits as contained in KRS 334A.190.
>
> 707 KAR 1:350 Section 3 (1-10)

If a teacher of children with disabilities is employed less than full time to provide special education and related services, or provides instructional services for children without disabilities, the DoSE and the building principal adjust the teacher's class size and caseload proportionately.

Caseload for Speech and Language Pathologists

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

Caseload for a Collaborative Model Class

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

707 KAR 1:350 Section 2 (4)

Placement for Children with Autism, Deaf-blindness and Developmental Delay

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

707 KAR 1:350 Section 2 (3)

Resource Class Size

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

707 KAR 1:280 Section 1 (10)

A LEA shall provide special education according to class size for resource classes for each child with a disability as follows:
(a) emotional-behavior disability is eight (8);
(b) functional mental disability is eight (8);
(c) hearing impairment is eight (8);
(d) mild mental disability is ten (10);
(e) multiple disabilities is eight (8);
(f) orthopedic impairment is ten (10);
(g) other health impairment is ten (10);
(h) specific learning disability is ten (10); and
(i) visual impairment is eight (8).

707 KAR 1:350 Section 2 (2)

Waiver of Caseload or Class size Limits

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

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

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

See **IMPLEMENTATION AND SERVICE DELIVERY RESOURCES**, Special Education Waiver Process.

CONFIDENTIALITY

ACCESS RIGHTS

Education Records

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

KRS 160.700(3)

"Education Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
Education record means those records, files, documents, and other materials that are:
(a) Directly related to a student; and
(b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR 99.3

"Education Records" do not include:
(a) Records of instructional supervisory, and administrative personnel and education personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
(b) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are maintained separately from educational records; maintained solely for law enforcement purposes; and disclosed only to law enforcement officials of the same jurisdiction;
(c) In the case of persons who are employed by an educational agency or institution but who are not in attendance at that agency or institution, records made and maintained in the normal course of business which relate exclusively to that person in the person's capacity as an employee and are not available for use for any other purpose; and
(d) Records on a student who is eighteen (18) years of age or older, which are made, used or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional for treatment of the student, and are not available to anyone other than persons providing the treatment, except a physician or other appropriate professional of the student's choice.

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

<u>Private Notes Kept by School Personnel</u>

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

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

If another person is knowledgeable of the contents of these notes, then they are subject to review by the parents, eligible student, or subpoena. Oral communication from such

notes or documents makes the documents an educational record and accessible to parents for review, even if these are maintained in the sole possession of the creator.

Inspection and Review of Educational Records

> An LEA shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the LEA. The LEA shall comply with a request without unnecessary delay and before any meeting regarding an IEP, dispute resolution meeting, or due process hearing, and in no case more than forty-five (45) days after the request has been made.
>
> 707 KAR 1:360 Section 1 (1)
> 34 CFR 300.613 (a)

> An educational agency or institution shall give full access rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.
>
> 34 CFR 99.4

> An LEA may presume that a parent has authority to inspect and review records relating to his child unless the LEA has been advised under a court order that the parent does not have the authority.
>
> 707 KAR 1:360 Section 1 (3)
> 34 CFR 300.613 (c)

> "Eligible student" means a student, or a former student, who has reached the age of eighteen (18) or is pursuing an education beyond high school and therefore the permission or consent required of, and the rights accorded to the parents of the student shall therefore be required of, and accorded to, the student.
>
> KRS 160.700 (4)

If the parent, representative, or eligible student makes a request to review and inspect educational records (see **CONFIDENTIALITY RESOURCES**, Request to Review Records), the retrieval and access of the records are provided:

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

Explanation and Interpretation of Records

> The right to inspect and review education records under this administrative regulation shall include:
> (a) the right to a response from the LEA to reasonable requests for explanations and interpretations of the records;
> (b) the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
> (c) the right to have a representative of the parent inspect and review the records.
>
> 707 KAR 1:360 Section 1 (2)
> 34 CFR 300.613 (b)
> KRS 160.715 (1)

If the parent requests an explanation of the records, SCPS staff 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.

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

Test Protocols

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

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

> …If a school were to maintain a copy of a student test answer sheet (an "educational record") the parent would have a right under Part B and FERPA to request an explanation and interpretation of the record. The explanation and interpretation by the school could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the responses in some other adequate manner that would inform the parent. …Federal copyright law protects against the distribution of copies of a copyrighted document, such as a test protocol. Since IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, Federal copyright law generally should not be implicated under these regulations.
>
> IDEA Interpretation for 34 CFR 300.562 (IDEA 1997)

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

Representative of Parent to Inspect and Review Records

If the parent authorizes an individual to serve as the parent's representative to inspect and review the records, the parent completes the Consent for the Release of Information form (see **CONFIDENTIALITY RESOUCES**) provided by SCPS. When the release of information form is appropriately signed by the legal representative of the child, the SCPS grants the authorized representative access to the educational records of the child. If copies of records are provided, a fee may be charged according to **FEES FOR COPYING RECORDS** in procedures for **CONFIDENTIALITY**).

Record of Disclosure Error! Bookmark not defined.

> A LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1 (except access by parents and authorized employees of the LEA), including:
> (1) the name of the party;
> (2) the date access was given; and
> (3) the purpose for which the party is authorized to use the records.
>
> 707 KAR 1:360 Section 2
> 34 CFR 300.614
> 34 CFR 99.32

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

RECORDS ON MORE THAN ONE CHILD

> If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of only that specific information.
>
> 707 KAR 1:360 Section 3
> 34 CFR 300.615
> 34 CFR 99.12

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

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

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

TYPES AND LOCATION OF INFORMATION

> A LEA shall provide parents, on request, a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the LEA.
>
> 707 KAR 1:360 Section 4
> 34 CFR 300.616

The DoSE maintains a list of the types and location of educational records for children with disabilities collected, maintained and used by the SCPS. The list, which is kept in the office of the DoSE, 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. If requested, the information

regarding the records of their child is made available to a parent.

FEES FOR COPYING RECORDS

> A LEA may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 if the fee does not effectively prevent the parent from exercising his right to inspect and review the records. The LEA shall not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.
>
> 707 KAR 1:360 Section 5
> 34 CFR 300.617
> 34 CFR 99.11
> KRS 160.715 (2)

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

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

RECORD AMENDMENT

Request to Amend Information in Education Records

> A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 is inaccurate, misleading, or violates the privacy or other rights of the child may request the LEA to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the LEA shall respond within ten (10) school days.
>
> 707 KAR 1:360 Section 6 (1)
> 34 CFR 300.618 (a)
> 34 CFR 99.20 (a)
> KRS 160.730 (1)

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

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

> The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
>
> 34 CFR 300.618 (b)
> 34 CFR 99.20 (b)

If, after the meeting, the SCPS decides to amend the information, the DoSE informs the parent in writing of the decision and amends the record.

> If the agency decides to refuse to amend the information in accordance with the request, it shall

inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.619.

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

If, after the meeting, the SCPS decides not to amend the information in accordance with the parent's request, the DoSE provides a written explanation (see **CONFIDENTIALITY RESOURCES**, Letter to Amend Records) to the parent and advises the parent of the right to a record amendment hearing.

Request for Record Amendment Hearing

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

707 KAR 1:360 Section 6 (2)

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

34 CFR 300.619
34 CFR 99.21 (a)

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

34 CFR 99.22 (c)

Within five (5) business days of receipt of the parent's written request for a hearing (see **CONFIDENTIALITY RESOURCES**, Request for Record Hearing), the Superintendent appoints a certified person who is a disinterested party to conduct the hearing. The DoSE and the person appointed to conduct the hearing, schedule the hearing to occur within thirty (30) calendar days of the date the request for a hearing was received.

“Disinterested party” is a person who:

1. will not benefit or suffer if the decision is for the child and against the SCPS, or for the SCPS and against the child; and
2. has no direct responsibility or authority for supervision of the child or personnel involved with the child.

Timelines for Record Amendment Hearing

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

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

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

1. The hearing is held within thirty (30) calendar days of the date of receipt of

the parent's written request for a hearing.

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

Conduct of Record Amendment Hearing

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

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

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

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

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

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

Result of Record Amendment Hearing

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

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

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

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

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

> If the hearing officer decides after the hearing the challenged information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district shall inform the student's parent(s) or guardian of the right to place a statement in the record commenting on the contested information or stating why he disagrees with the decision of the hearing officer. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the record, it shall also disclose the statement.
>
> 702 KAR 1:140 Section 3 (1)
> 34 CFR 300.620 (b-c)

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

DISCLOSURE OF EDUCATIONAL RECORDS

List of Persons Who May Have Access to Educational Records

> A LEA shall maintain, for public inspection, a current listing of the names and positions of employees within the LEA who may have access to personally identifiable student information.
>
> 707 KAR 1:360 Section 8 (4)
> 34 CFR 300.623 (d)

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

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

Written Parental Consent

> Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 17, parental consent shall be obtained before personally identifiable student information is:
> (a) disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Chapter 1; or
> (b) used for any purpose other than meeting a requirement under 707 KAR Chapter 1.
>
> 707 KAR 1:360 Section 7 (1)
> 34 CFR 300.622 (a)
> KRS 160.720 (1)

> The written consent must:

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

34 CFR 99.30 (a)

Consent for Release of Information for Transition Services

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

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

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

Disclosure without Consent

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

707 KAR 1:360 Section 7 (2)
34 CFR 300.622 (a)
34 CFR 99.31
KRS 160.720 (2)

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

1. to the parent of a student who is not an eligible student, or to the eligible student;
2. to school officials who have been determined by SCPS to have legitimate educational interest including:
    a. members of the ARC;
    b. personnel responsible for the IEP;
    c. student teachers; and
    d. paraprofessionals;
3. official personnel of another public school, school system, or institution of postsecondary education where the student seeks or intends to enroll;
4. to authorized representatives of:
    a. the Comptroller General of the United States;
    b. the Secretary; and
    c. State and local educational authorities;
5. in connection with financial aid for which a student has applied or for which a student has received, provided that personally identifiable information from the

records of the student is disclosed only as may be necessary for such purposes as:

a. determining the eligibility of the student for financial aid;
b. determining the amount of the financial aid;
c. determining the condition which will be imposed regarding the financial aid; or
d. enforcing the terms or conditions of the financial aid;

6. to state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 1974;
7. to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administering student aid programs; or improving instruction;
8. to accrediting organizations in order to carry out their accrediting functions;
9. to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;
10. to comply with a judicial order or lawfully issued subpoena, provided SCPS has made a reasonable effort to notify the parent or the student of the order or subpoena prior to compliance, unless the disclosure is in compliance with a Federal grand jury subpoena or any other subpoena issued for a law enforcement purpose;
11. to appropriate parties in a health or safety emergency; and
12. information SCPS has designated as "directory" information.

Emergency that May Warrant Disclosure Without Consent

> An education agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
>
> 34 CFR 99.36 (a)

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

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

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

Upon determination by the building principal or designee that the situation is an emergency and warrants the disclosure of educational records, the building principal or

designee obtains the records of the child and makes them available to the appropriate parties immediately.

Release of Education Records to another Public School District

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

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

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

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

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

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

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

> If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.
>
> 34 CFR 300.622 (3)

If SCPS receives a request from a private school or agency, the principal or designee requests that the parent sign the Consent for Release of Information before any educational records are sent. If copies of the record are provided, a fee may be charged according to **FEES FOR COPYING RECORDS** in procedures for **CONFIDENTIALITY**.

Records Regarding Migratory Children with Disabilities

> An LEA shall transfer health and education records on migratory children with disabilities who move to other states in accordance with the No Child Left Behind Act, 20 U.S.C. 6398.
> 707 KAR 1:290 Section 10
> 34 CFR 300.213

If SCPS receives a request from a school or agency in another state regarding a migratory student, the principal or designee sends a copy of the student's health and education records and requests that the parent sign the Consent for Release of Information before any educational records are sent. If copies of the record are provided, a fee may be charged according to **FEES FOR COPYING RECORDS** in procedures for **CONFIDENTIALITY**.

Re-disclosure of Personally Identifiable Information

> An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to another party without the prior consent of the parent or eligible student. An education agency shall inform a party to whom disclosure is made of the requirements of this section.
> 34 CFR 99.33 (a) (1) and (d)

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

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

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

Parent Refusal to Release Information

> If a parent refuses to provide consent for release of personally identifiable information, a party may request a due process hearing pursuant to 707 KAR 1:340 or comply with the FERPA.
> 707 KAR 1:360 Section 7 (3)

If a parent refuses to give consent for the disclosure of educational records needed to provide a free appropriate public education, and the SCPS disagrees with the parent's refusal for disclosure, the SCPS may request a due process hearing according to procedures in **PROCEDURAL SAFEGUARDS**.

CONFIDENTIALITY SAFEGUARDS

> An LEA shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.
>
> 707 KAR 1:360 Section 8 (1)
> 34 CFR 300.623 (a)

Records Security

SCPS ensures that the confidentiality of personally identifiable information is protected and unauthorized access is prevented at the following stages:

1. collection (e.g., during handling of referrals);
2. storage (e.g., secure files, protection of computer files);
3. disclosure (e.g., during access to records); and
4. destruction (e.g., during the process of records destruction).

Persons Responsible for Ensuring Confidentiality

> A LEA shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.
>
> 707 KAR 1:360 Section 8 (2)
> 34 CFR 300.623 (b)

The Director of Pupil Personnel is responsible for ensuring the confidentiality of personally identifiable information for all students. The DoSE is responsible for the general supervision of all educational records related to children and youth with disabilities. Building principals have responsibility for all records maintained at the building level even though teachers may have custody of the records.

Confidentiality Training

> A LEA employee collecting or using personally identifiable information shall receive training or instruction regarding the requirements of this administrative regulation.
>
> 707 KAR 1:360 Section 8 (3)
> 34 CFR 300.623 (c)

SCPS provides training for all SCPS personnel who collect, use, or maintain personally identifiable information. Within thirty (30) calendar days prior to the start of school, all SCPS administrative staff are trained regarding SCPS policies and procedures for confidentiality. Within thirty (30) calendar days of the start of school, all other SCPS personnel who have access to educational records are trained by the building principal or designee regarding SCPS policies and procedures regarding confidentiality. When new staff are employed during the school year, the individual's immediate supervisor provides training in confidentiality issues for the new employee. Copies of documentation for confidentiality training are maintained by the DPP at the Central Office.

SCPS provides training for volunteers and any others who may have access to personally identifiable information such as mentors, foster grandparents, student teachers, etc.

DESTRUCTION OF INFORMATION

> An LEA shall inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information shall be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.
>
> 707 KAR 1:360 Section 9
> 34 CFR 300.624 (a-b)

The Records Retention Schedule (see **CONFIDENTIALITY RESOURCES**) governs the destruction of all school records, and specifies that special education records must be maintained for a specific number of years (typically seven years) after the last activity involving special education services for the specific child. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained indefinitely.

During the Annual Review meeting for a student who is attending their last year of high school (see **Review and Revision of the IEP** in procedures for **IMPLEMENTATION AND SERVICE DELIVERY**) the ARC Chairperson explains the SCPS procedures for destruction of records. The ARC Chairperson asks the parent or eligible student to sign consent for destruction of records (see **CONFIDENTIALITY RESOURCES**) and files the form in the record of the student.

When SCPS determines that educational records are no longer needed to provide services for a child with a disability, the DoSE notifies the parent(s) to inform them of the date the records will be destroyed by publishing a notice in the newspaper regarding the record destruction and the date the records will be destroyed.

Parent Request for Destruction of Records

If a parent requests the destruction of educational records, the Principal or designee destroys the records in accordance with the requirements of the Records Retention Schedule.

If a parent requests destruction, the SCPS <u>does not</u> destroy any records:

1. that have not been retained for a minimum period of time since the last activity (see Records Retention Schedule);
2. if there is an outstanding request to inspect or review the records;
3. if there is an unresolved finding of noncompliance in a program or fiscal audit; or
4. if the records are needed for planning and implementing an individual educational program to demonstrate compliance with applicable state and federal requirements.

If the parent of a child or youth with disabilities requests the destruction of records, the SCPS Representative or designee informs the parent or eligible student that the records may be needed to establish social security benefits or other purposes.

RIGHTS OF THE ELIGIBLE STUDENT

> The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law.
>
> 707 KAR 1:360 Section 10
> 34 CFR 300.625 (b)

Prior to the youth's eighteenth (18th) birthday, the SCPS Representative provides notice to the parent and the student (see **CONFIDENTIALITY RESOURCES,** Notice of Transfer of Rights) that the rights regarding review, inspection, and disclosure of records will transfer to the youth at the age of eighteen (18). The notice is documented on the Conference Summary and in the IEP.

The SCPS does not disclose educational records of a youth over the age of eighteen (18) to the parent without:

1. the youth's written consent;
2. a court order; or
3. proof that the youth is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954.

CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS

PRIVATE SCHOOL CHILDREN WITH DISABILITIES

Private school children with disabilities means children with disabilities enrolled by their parents in private schools and not children with disabilities enrolled in private schools upon referral by a LEA.
707 KAR 1:280 Section 1 (47)
34 CFR 300.130

"Home school" means for purposes of 707 KAR Chapter 1 only, a private school primarily conducted in one's residence.
707 KAR 1:280 Section 1 (31)

CHILD FIND ACTIVITIES IN PRIVATE SCHOOLS

(1) An LEA shall locate, identify, and evaluate all private school children with disabilities, including school children attending private, religious schools within the boundaries of the LEA. These activities shall be comparable to the activities to locate, identify, and evaluate children with disabilities in the public schools. An LEA in which private schools are located shall include parentally-placed private school children who attend those schools but reside in a state other than Kentucky in the LEA's child find activities.
(3) An LEA shall consult with appropriate representatives of the private schools on how to carry out these activities.
(4) Child find activities shall be completed in a time period comparable to that for other students attending public school in the LEA. An LEA shall not consider the costs, including the cost of individual evaluations incurred by the LEA's child find activities, in meeting its obligation under 707 KAR 1:370 Section 4 (3).
707 KAR 1:370 Section 2 (1), (3), (4)
34 CFR 300.131

If, through Child Find activities, SCPS locates a child who is parentally placed in a private school in SCPS, SCPS staff cannot disclose information to the school of residence without obtaining written parental consent (see **Release of Education Records to another Public School District** in **CONFIDENTIALITY** procedures).

Child Tracking System

Child Find for Children with Disabilities Enrolled by their Parents in Private School.
(2) The LEA shall maintain in its records and provide to KDE:
(a) the number of children evaluated under this section;
(b) the number of children determined to be children with disabilities under this section; and
(c) the number of children served under this section.
707 KAR 1:370 Section 2 (2)
34 CFR 300.131 (a) & (b)

SCPS has developed and implements a child tracking system that monitors:

1. children who are in the referral and evaluation process;
2. children who are determined to have a disability;
3. children who are currently receiving needed special education and related services, including private school children receiving services as outlined in a Services Plan; and
4. children who have been determined eligible for special education and related services but are not currently receiving these services, including children in

private schools who do not have a Services Plan.

Evaluation for Services

> If a parent of a child who is parentally placed in a private school does not provide consent for the initial evaluation or the reevaluation or a parent fails to respond to such a request, the LEA:
> (a) shall not use the procedures in 707 KAR 1:340 for mediation, dispute resolution meeting, or a due process hearing;
> (b) shall not be required to consider the child as eligible for services under this administrative regulation; and
> (c) shall document its attempts to obtain parental consent which may include records of telephone calls, copies of correspondence, records of home or place or employment visits, and the results of these efforts.
>
> 707 KAR 1:370 Section 3
> 34 CFR 300.140

SCPS evaluates all children with suspected disabilities who attend any school within the boundaries of SCPS, according to procedures for **PROCEDURAL SAFEGUARDS** and **EVALUATION**.

Eligibility for Services

The ARC follows SCPS established procedures for **PROCEDURAL SAFEGUARDS**, **EVALUATION**, **ELIGIBILITY**, and **IEP**.

FAPE Availability

> An LEA shall make FAPE available to each child with a disability. If a parent decides to place his child with a disability in a private school after the offer of FAPE, the LEA shall not be required to pay for the cost of the private education. Disagreements between a parent and the LEA regarding the availability of a program appropriate for the student and financial responsibility shall be subject to the due process procedures in 707 KAR 1:340.
>
> 707 KAR 1:370 Section 1 (1)
> 34 CFR 300.148 (a)
> KRS 157.280 (3)

If the ARC determines that SCPS has an appropriate educational program for the child, and the parent chooses to place the child in a program or facility in another public school district or private organization, the parent assumes responsibility for payment for the costs incurred in educating the child.

SCPS does not pay for the education of a child with a disability in any location other than the one selected by the ARC if the child has a free appropriate public education available from the public school district and the parents chose to unilaterally place the child in the private school or facility.

Disagreements between a parent and SCPS regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to due process procedures.

> Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. There shall be no individual right to special education and related services,

but the student shall receive the services provided in the service plan in light of the services the LEA has determined to provide.

707 KAR 1:370 Section 6 (2)
34 CFR 300.138 (a) (2)
34 CFR 300.137 (a)

A parentally placed private school child with a disability has no individual right to receive FAPE.

Services Plan

A private school child with a disability who has been designated to receive services shall have a services plan that describes the specific special education or related services that the LEA will provide in light of the services the LEA has determined to provide private school children with disabilities through the process in Section 5 of this administrative regulation.

707 KAR 1:370 Section 6 (3)
34 CFR 300.138 (b)

If, after the ARC determines the child meets eligibility for a disability, the parents make clear their intention to enroll (or continue enrollment of) their child at a private school, the ARC does not develop an IEP for the child. The ARC may determine the child may receive services through a Services Plan that describes the special education or related services SCPS will provide according to the procedures for **Determination of Proportionate Amount of Spending** in **CHILDREN PLACED IN PRIVATE SCHOOLS**.

If a determination is made that the child needs special education and related services, the general rule in 34 CFR Section 300.535 (b) is that an IEP must be developed for the child in accordance with 34 CFR Section 300.340-300.350, with one important exception. If the parents make clear their intention to enroll their child at a private school and that they are not interested in a public program or placement for their child, the public agency need not develop an IEP for the child. If the parents choose not to accept the public agency's offer to make FAPE available to their child, the public agency still must include the child in its eligible population of parentally-placed private school children with disabilities, whose needs must be considered and addressed in accordance with 34 CFR Section 300.450-300.462 of the Part B regulations.

OSEP Memo, Q&A #8, May 2000

An LEA shall provide special education and related services to parentally placed private school children with disabilities in accordance with 707 KAR 1:370 Section 5, to the extent consistent with the number and location of these children enrolled in private schools located within the school district boundaries.

707 KAR 1:370 Section 4 (1)
34 CFR 300.138 (b) (1)

A service plan shall be developed and implemented for each private school child with a disability who has been designated by the LEA to receive special education and related services under 707 KAR 1:370 Section 5.

707 KAR 1:370 Section 4 (2)
34 CFR 300.138 (b) (2)

SCPS conducts ARC meetings for every child who is enrolled in a private school and has been evaluated by SCPS. If the child meets eligibility for a disability, and the parent of the eligible child makes clear their intention to enroll (or continue enrollment of) their child at a private school, the ARC does not develop an IEP. The ARC Chairperson

provides a full and complete explanation of the services the child would receive if enrolled in SCPS. The ARC may determine the child may receive services through a Services Plan.

If the ARC determines the private school child with a disability will receive services from SCPS, the ARC develops a Service Plan to specify the services the child will receive. The Services Plan reflects only the services offered to the private school child with a disability.

The DoSE includes the child in the child tracking system as a parentally-placed private school child with a disability.

SCPS provides special education and related services as described in the Services Plan for children with disabilities enrolled in private schools. SCPS does not provide classes in the general curriculum for the private school student at the public school. For example, if parents request that in addition to receiving speech at the public school, their child also be allowed to take physics, SCPS is not obligated, and does not allow the child to take physics.

Implementation of the Services Plan

> The services plan shall, to the extent appropriate:
> (a) meet the requirements of an IEP under 707 KAR 1:320 with respect to the services provided; and
> (b) be developed, reviewed, and revised consistent with the requirements to develop, review, and revise IEPs.
>
> 707 KAR 1:370 Section 6 (4)
> 34 CFR 300.138 (b) (2)

> If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from an LEA, the LEA must
> (1) initiate and conduct meetings to develop, review, and revise a services plan for the child; and
> (2) ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.
>
> 34 CFR 300.137 (c)

> Services delivered through a service plan shall be provided by:
> (a) employees of the LEA; or
> (b) through a contact with the LEA.
>
> 707 KAR 1:370 Section 6 (5)
> 34 CFR 300.138 (c) (1)
>
> Special education and relates services provided through a service plan shall be secular, neutral, and nonideological.
>
> 707 KAR 1:370 Section 6 (6)
> 34 CFR 300.138 (c) (2)

The ARC develops, reviews, and revises the Services Plan on an annual basis, or as necessary, according to procedures for **PROCEDURAL SAFEGUARDS, IEP,** and **SERVICE DELIVERY**.

The ARC Chairperson ensures a representative of the private school is included in the

ARC to develop or revise a child's Services Plan. If a representative of the private agency cannot attend the ARC meeting, SCPS uses other methods to assure the representative's participation, including individual or conference telephone calls. ARC meetings are scheduled and conducted according to procedures in **PROCEDURAL SAFEGUARDS**.

Reevaluation for Continued Eligibility

SCPS conducts three-year reevaluations of children with disabilities who attend private schools. If the child is receiving services from SCPS through a Services Plan, the ARC Chairperson sends a Notice to the parent according to **NOTICE OF ARC MEETING** in procedures for **PROCEDURAL SAFEGUARDS**.

If the child does not receive services from SCPS, but has been previously identified as a child with a disability, SCPS sends a notice to the parent (see **CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS RESOURCES**, Letter for Withdrawal to Private School) to schedule an ARC for the purpose of reviewing current information and planning an evaluation.

Location of Services

> A service to a private school child with a disability may be provided at a site determined by the LEA. If necessary for the child to benefit from or participate in the services provided under a services plan, the private school child with a disability shall be provided transportation:
> (a) from the child's school or the child's home to a site other than the private school; and
> (b) from the service site to the private school, or to the child's home, depending on the timing of the services.
>
> 707 KAR 1:370 Section 7 (1)
> 34 CFR 300.139 (b)

The DoSE, in consultation with private school representatives, makes the decision regarding the location of services to implement the Services Plan. If the child attends a private school outside the boundaries of SCPS, SCPS may provide the services within the SCPS boundaries, or through contract with the public school district in which the private school is located. The public school district in which the private school is located is not required to contract to provide the services.

> A LEA shall not be required to provide transportation from the child's home to the private school.
>
> 707 KAR 1:370 Section 7 (2)
> 34 CFR 300.139 (b) (1) (B) (ii)

SCPS "works in consultation with representatives of private school children to ensure that services are provided at sites that will not require significant transportation costs."

Formal Complaint

> The due process procedures afforded to parents and children with disabilities described in 707 KAR 1:340 Section 4, 6, 8, 9, 10, 11, and 12 shall not apply to complaints that a LEA failed to meet the requirements of this administrative regulation, including the provision of services indicated on a services plan. However, these requirements may be the basis for a written formal complaint under 707 KAR 1:340,

Section 7. The due process procedures described in 707 KAR 1:340 shall apply to complaints that an LEA failed to complete its responsibilities under child find for private school children with disabilities and its responsibilities to evaluate and determine eligibility for private school children with disabilities.

707 KAR 1:370 Section 8 (1)
34 CFR 300.140 (a, b, c)

Parents of students who are voluntarily enrolled in private schools and receiving services under a Services Plan cannot seek mediation or a due process hearing regarding the school's alleged failure to meet the requirement of providing services to the child. The parents may request a meeting to review and revise the child's Services Plan, or file a complaint with the Kentucky Department of Education, according to **STATE COMPLAINT PROCEDURES** in procedures for **PROCEDURAL SAFEGUARDS**.

Due Process Procedures

In the event of disagreements between the parents and SCPS, the SCPS representative provides to the parent an explanation of the rights of the parent regarding private school placement.

Parents may only seek a due process hearing to challenge SCPS Child Find activities or failure to comply with the evaluation requirements.

CONSULTATION WITH REPRESENTATIVES OF PRIVATE SCHOOLS

A LEA shall consult in a meaningful and timely fashion with private school representatives, and parents or representatives of parent of parentally-placed school children with disabilities during the design and development of special education and related services regarding the following:
(a) the child find process, including how children suspected of having a disability can participate equitably and how parents, teachers, and private school officials will be informed of the process;
(b) the determination of the proportionate share of federal funds, including how calculated;
(c) how the consultation process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
(d) how, where, and by whom special education and related services will be provided including:
1. a discussion of the types of services, including direct services and alternate service delivery methods;
2. how special education and related services will be apportioned if funds are not sufficient to serve all parentally placed private school students with disabilities; and
3. how and when those decisions will be made; and
(e) how the LEA will provide a written explanation to the private schools of the reasons why the LEA chose not to provide services directly or through a contract, if the LEA disagrees with the views of the private school representatives.

707 KAR 1:370 Section 5 (1)
34 CFR 300.134 (a-d)

The DoSE obtains a list of students who reside in the district and are attending private schools from the Director of Pupil Personnel (DPP). This list is maintained by the DPP from information provided in accordance with KRS 159.160, which requires non-public schools to report to the local superintendent information needed to comply with the laws regarding compulsory school attendance.

The DoSE sends a letter (see **CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS RESOURCES,** Form letter for Consultation) to selected representatives of private schools where residents of SCPS may attend school. The letter offers the private school representatives an opportunity for input into SCPS plans for conducting Child Find activities for private school students; funding available for services; and the number of SCPS residents with disabilities who attend private school, and the location and needs of the students. The DoSE maintains written records of the input received from the private school representatives.

SCPS personnel make the final determine of the types and levels of services to be provided.

Determination of Proportionate Amount of Spending

> To meet the requirements of 707 KAR 1:370 Section 4, an LEA shall spend a proportionate amount of the federal money it receives under the IDEA pursuant to 34 CFR 300.133. This amount shall be determined after the LEA has completed its child find activities and submitted a child count figure to KDE. This child count shall be conducted on December 1 of each year.
>
> 707 KAR 1:370 Section 4 (3)
> 34 CFR 300.133 (c)

The DoSE ensures that the child tracking system includes information on all children with disabilities, including children with disabilities who attend private schools but are not currently receiving services. The information is used to determine the proportionate amount of funding, as well as the implementation of reevaluation timelines.

The proportionate amount is a ratio based on the total number of children who are eligible for services, not children actually served. The amount is derived from dividing the total number of parentally-placed private and home school students eligible for special education services by the total number of children with disabilities who are eligible for special education services. This provides a percent of the IDEA-B grant to spend on the parentally placed private and home school students.

Once the proportionate share of funds is calculated, the funds that are expended do not have to be Federal funds. If State categorical aid funds or local funds are used, this meets the requirement of the proportionate share of funds. Section 189 of the Kentucky Constitution prohibits the appropriation, use, or aid of any non-public (private) school through state taxes levied for educational purposes (e.g., teachers paid from the district general fund cannot provide services at the private school site).

> When timely and meaningful consultation has occurred, the LEA shall obtain a written affirmation signed by the representatives of the private school. If a private school does not provide the affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the KDE.
>
> 707 KAR 1:370 Section 5 (2)
> 34 CFR 300.135 (a) & (b)

Once the consultation meeting is over, the district reviews the needs of all parentally placed private school children; considers the views of the parents and private school

administrators; considers the number of students, type(s) of services, location of services, and the service provider to determine how to apportion the funds for "*equitable participation*." SCPS requests a written affirmation from the private school representatives that they participated in the meeting. If SCPS does not receive a written affirmation, SCPS copies the written documentation of the process and sends to KDE, Office of Exceptional Children.

> An LEA shall not consider the costs, including the cost of individual evaluations incurred by the LEA's child find activities, in meeting it's obligation under 707 KAR 1:370 Section 4 (3).
>
> 707 KAR 1:370 Section 2 (4)
> 34 CFR 300.131 (d)

The DoSE does not include the cost for Child Find activities, evaluation, and reevaluation in the calculation of proportionate share of expenditures.

See **CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS RESOURCES,** Guidelines for Consultation with Private Schools.

> The cost of transportation may be included in calculating the amount to be expended on private school children with disabilities.
>
> 707 KAR 1:370 Section 7 (3)
> 34 CFR 300.139 (b) (2)

RESTRICTIONS ON SERVING NON-PUBLIC SCHOOL STUDENTS

Use of Funds

> A LEA shall not use funds under Part B of IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA shall use the funds provided under IDEA to meet the special education and related services needs of private school children with disabilities but not for:
> (a) the needs of a private school; or
> (b) the general needs of the students enrolled in the private school.
>
> 707 KAR 1:370 Section 9 (1)
> 34 CFR 300.141 (a-b)

> The LEA shall not use any funds under Part B of IDEA for repairs, minor remodeling, or construction of private school facilities.
>
> 707 KAR 1:370 Section 9 (7)
> 34 CFR 300.144 (e)

The DoSE monitors the use of Part B funds for children voluntarily placed by their parents in private schools. The DoSE ensures that IDEA funds are not used to finance the existing level of instruction in the private school, even if such service addresses the need of a child with a disability; and that service plans do not address any needs of a child that may be met by existing programs in the private school. The DoSE ensures that funds are not used to address the general needs of students enrolled in the private school, but used only for those needs that are unique to the child with a disability.

Personnel

An LEA shall ensure that services provided under a services plan shall be provided by personnel meeting the same standards as personnel providing services in the public school, except private school teachers that provide services under a service plan shall not have to meet the highly qualified special education teacher requirements of 20 U.S.C. 1401 (10).

707 KAR 1:370 Section 6 (1)
34 CFR 300.138 (a) (1)

An LEA may use funds under Part B of IDEA to make public school personnel available in private schools to the extent necessary to provide services under a services plan and if those services are not normally provided by the private school.

707 KAR 1:370 Section 9 (2)
34 CFR 300.142 (a)

A LEA may use funds under Part B of IDEA to pay for the services of private school personnel to provide services under a services plan if the employee performs the services outside his regular hours of duty and the employee performs the services under the supervision and control of the LEA.

707 KAR 1:370 Section 9 (3)
34 CFR 300.142 (b)

SCPS ensures that personnel implementing the services plan meet the same standards as are required by SCPS; however, SCPS does not require private school teachers providing services to meet the specifications under the No Child Left Behind Act for highly qualified.

The DoSE monitors the amount of Part B funds utilized for salaries or contracted service delivery purposes by specific individual and job assignment. The DoSE assigns SCPS staff to provide services in Private Schools only to the extent determined by Service Plans developed by the ARC.

If, after consultation with the Superintendent, the DoSE determines that Part B funds will be used to contract with Private School personnel to provide services under a Service Plan, the contract includes the specification that the services are provided outside his/her regular hours of duty at the Private School, and under the supervision and control of SCPS. The DoSE ensures the provision of the supervision and evaluation of the services delivered.

Property, Equipment and Supplies

The LEA shall keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under Part B of IDEA and uses for the benefit of private school children with disabilities. An LEA may place equipment and supplies in a private school for the period of time needed to provide the services.

707 KAR 1:370 Section 9 (4)
34 CFR 300.144 (a-b)

The DoSE keeps an inventory of any property, equipment and supply items purchased through the use of Part B funds that are utilized to provide benefit to private school children with a disability through Service Plans. The inventory includes items utilized for the purposes of Child Find (evaluation tests/kits, equipment such as audiometers, etc.), and service delivery (language programs, reading kits, picture cards, etc.).

The LEA shall ensure that the equipment, and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.
707 KAR 1:370 Section 9 (5)
34 CFR 300.144 (c)

The LEA shall remove equipment and supplies from the private school if the equipment and supplies are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies.
707 KAR 1:370 Section 9 (6)
34 CFR 300.144 (d)

When the assigned location of the equipment or supplies is at a private school, the DoSE ensures that the item(s) are secure, not permanently installed, and available for use with children with disabilities only by SCPS assigned or contracted staff. The items are removed from the private school location by SCPS staff when no longer needed for Part B purposes (Child Find activities or service delivery as specified by a Service Plan). Federal funds are not used for repair, remodeling, or construction at a private school site. The DoSE instructs SCPS staff to report any suspected unauthorized use of the items. The DoSE may remove the items from the private school site.

PARENTAL PLACEMENT OF A CHILD WHO PREVIOUSLY RECEIVED SPECIAL EDUCATION AND RELATED SERVICES

If a parent of a child with a disability, who previously received special education and related services under the authority of the LEA, enrolls the child in a private school without the consent of or referral by the LEA, a hearing officer or a court may award financial reimbursement to the parent if it is determined that the LEA did not offer FAPE to the child in a timely manner and the private placement is appropriate. This may be awarded even if the parents did not receive consent from the LEA for the private placement and the LEA did not make a referral to the private school. A hearing officer or a court may determine a private school placement to be appropriate even though it does not meet state standards that apply to a LEA.
707 KAR 1:370 Section 1 (2)
34 CFR 300.148 (c)

The cost of the financial reimbursement described in 707 KAR 1:370 Section 1 (2) may be reduced or denied if:
(a) at the most recent ARC meeting prior to the removal by the parents of their child with a disability to the private school, the parents did not inform the LEA that they were rejecting the proposed LEA placement, including stating their concerns and their intent to enroll the child in a private school at public expense;
(b) the parents did not give written notice to the LEA of the information described in (a) above at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child;
(c) prior to the parent's removal of the child, the LEA informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
(d) there is a judicial finding that the actions taken by the parents were unreasonable.
707 KAR 1:370 Section 1 (3)
34 CFR 300.148 (d)

The cost of financial reimbursement shall not be reduced or denied for the failure to provide the notice in 707 KAR 1:370 Section 1 (3) if:
(a) the parent is illiterate;
(b) compliance with the notice requirement would likely result in physical or serious emotional harm to the child;

(c) the school prevented the parent from providing the notice; or
(d) the parent had not received notice from the LEA of his obligation to provide this notice.

707 KAR 1:370 Section 1 (4)
34 CFR 300.148 (e)

SCPS includes notice of the above responsibilities to the parent in the written Notice of Parental Procedural Safeguards (parent rights) document provided according to procedures for **PROCEDURAL SAFEGUARDS**.