

707 KAR 1:002. Definitions.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes definitions for this chapter of administrative regulations regarding special education.

Section 1. Definitions. (1) "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.

(2) "Adverse effect" 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.

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

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

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, like those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the child.

(5) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term

shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional-behavior disability.

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

(7) "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.

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

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

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

1. The series of removals total more than ten (10) school days in a school year;

2. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

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

(9) "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 effect on the child's educational performance and who, as a result, needs special education and related services.

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

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

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

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

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

(15) "Consent" means:

(a) A parent has been fully informed of all information relevant to the activity for which consent is sought, in his native language, or other mode of communication;

(b) A parent understands and agrees in writing to the carrying out of the activity for which his consent is sought, and the consent describes the activity and lists the records, if any, that will be released and to whom;

(c) A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and

(d) If a parent revokes consent, that revocation does not negate an action that has occurred after the consent was given and before the consent was revoked.

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

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

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

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

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

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

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

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

(b) Scores of one and one-half (1 1/2) 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 normal scores are inconclusive and the ARC documents in a written report the reasons for concluding that a child has a developmental delay.

(23) "Education records" means records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232g.

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

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 (1)) inappropriate behaviors that are the result of willful, intentional, or wanton actions unless it is determined through the evaluations process that the child does have an emotional-behavioral disability.

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

(26) "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.

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

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the Kentucky Department of Education included in 707 KAR Chapter 1 and the Program of Studies, 704 KAR 3:303, as appropriate;

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformity with an individual education program (IEP) that meets the requirements of 707 KAR 1:320.

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

(29) "Hearing impairment", 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 (500Hz, 1000Hz, and 2000Hz) 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 effect on the child's educational performance.

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

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

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

(33) "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.

(34) "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.

(35) "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 Type Well and special interpreting services for children who are deaf-blind.

(36) "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.

(37) "Mental disability" means that a child has one (1) 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. Manifestation is typically during the developmental period; or

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

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; and

4. Manifestation is typically during the developmental period.

(38) "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.

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

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

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;

(b) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment; or

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

(41) "Orthopedic impairment" or "OI" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes:

(a) An Impairment caused by a congenital anomaly such as clubfoot, or absence of some member;

(b) An Impairment caused by disease such as poliomyelitis, or bone tuberculosis; and

(c) An impairment from other causes such as cerebral palsy, amputations, and fractures or burns that causes contractures.

(42) "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:

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

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

(43) "Parent" means:

(a) A biological or adoptive parent of a child;

(b) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

(c) 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 ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child;

(e) A foster parent if the biological or adoptive parents grant authority in writing for the foster parent to make educational decisions on the child's behalf, and the foster parent is willing to make educational decisions required of parents under 707 KAR Chapter 1, and has no interest that would conflict with the interests of the child; or

(f) A surrogate parent who has been appointed in accordance with 707 KAR 1:340, Section 6.

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

(45) "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.

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

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

(48) "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 administrative 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.

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

(50) "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.

(51)(a) "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 ed-

ucation. 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.

(b) "Related services" also means school health services and school nurse services, social work services in school, and parent counseling and training.

(c) "Related services" do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping) maintenance of that device, or the replacement of that device.

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

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.

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

(53) "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.

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

(55) "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.

(56) "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.

(57) "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.

(58) "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.

(59) "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.

(60) "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.

(61) "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.

(62) "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 strengths, 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.

(63) "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 (1) or more areas, including:

(a) Cognition;

(b) Language;

(c) Memory;

(d) Attention;

(e) Reasoning;

(f) Abstract thinking;

(g) Judgment;

(h) Problem-solving;

(i) Sensory, perceptual, and motor abilities;

(j) Psychosocial behavior;

(k) Physical functions;

(l) Information processing; and

(m) Speech.

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

(65) "Visual impairment" or "VI" means a vision loss, even with correction that:

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

(b) Has an adverse effect on the child's educational performance; and

(c) Meets the following:

1. The child has visual acuity with prescribed lenses that is 20/70 or worse in the better eye;

or

2. The child has 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 twenty (20) degrees or worse;

c. A medically-diagnosed condition of cortical blindness; or

d. A functional vision loss.

(66) "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 nonvoluntary and the biological or adoptive parental rights have been terminated.

(67) "Weapon" means "dangerous weapon" as defined in 18 U.S.C. 930(g)(2).

(68) "Withholding" means no further payment of specified funds are made to an approved recipient. (26 Ky.R. 2127; Am. 27 Ky.R. 153; 496; eff. 8-14-2000; 33 Ky.R. 3463; 34 Ky.R. 41; 977; eff. 12-7-2007, Recodified from 707 KAR 1:280, 12-7-07.)