

707 KAR 1:320. Individual education program.

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 requirements for the development, implementation, and revision of individual education programs for each child with a disability.

Section 1. Individual Education Programs. (1) An LEA shall ensure 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.

(2) 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.

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

(4) 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.

(5) An 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.

(6) 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.

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

Section 2. ARC Meetings. (1) An LEA shall ensure that each child has an ARC which includes the membership in Section 3 of this administrative regulation and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

(2) An ARC shall not have to be convened in order to make minor, nonprogrammatic, changes to an IEP, such as typographical errors, incorrect directory information about the stu-

dent (such as, birth date, age, grade, address, or school), and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the LEA makes any minor, nonprogrammatic 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.

(3) 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.

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

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

(a) If the child moves to a new LEA after consent for the initial evaluation is given but before the evaluation can be completed, as long as the new LEA is making sufficient progress to complete the evaluation and 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.

(6) An LEA shall ensure that the ARC:

(a) Reviews each child's IEP periodically, but no less than annually, to determine whether the annual goals for the child are being achieved; and

(b) Revises the IEP in accordance with 34 C.F.R. 300.324(b)(1)(ii).

Section 3. ARC Membership. (1) 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 curriculum for same aged peers;

(c) Not less than one (1) special education teacher of the child or a special education teacher who is knowledgeable about the child's suspected disability or, if appropriate, at least one (1) 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 be a member of the team described in paragraphs (b) through (d) of this subsection;

(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.

(2) A member of the ARC team listed above 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 area of curriculum or related services is not being modified or discussed in the ARC meeting.

(3) A member of the ARC team listed above 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 at-

tendance 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.

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

(5) 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 subsection (1) of this section.

(6) If the purpose of the ARC meeting 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.

Section 4. Parent Participation. (1) An LEA shall ensure that one (1) 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 meetings 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-on time and place.

(2) 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.

(3) 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 subsection shall apply to a child younger than fourteen (14) years of age if determined to be appropriate by the ARC.

(4) 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 identity of any other agency that is invited to send a representative. This subsection shall apply to a child younger than sixteen (16) years of age if determined to be appropriate by the ARC.

(5) 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.

(6) An ARC meeting may be conducted without a parent in attendance if the LEA is unable to convince the parent that he 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 to the parent's home or place of employment and the results of those visits.

(7) 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.

(8) An LEA shall give the parent a copy of the child's IEP at no cost to the parent.

Section 5. Contents of IEP. (1) An ARC shall consider in the development of an IEP:

(a) The strengths of the child and the concerns of the parents for enhancing the education of their child;

(b) The results of the initial or most recent evaluation of the child;

(c) As appropriate, the results of the child's performance on any general state or districtwide assessment programs; and

(d) the academic, developmental, and functional needs of the child.

(2) An ARC shall:

(a) In the case of a child whose behavior impedes his or her learning or that of others, consider, 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 the child who is blind or visually impaired, provide for instruction in Braille and the use of Braille, unless the ARC determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(d) Consider the communication needs of the child;

(e) In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(f) Consider whether the child requires assistive technology.

(3) All the factors listed in this section shall be considered, as appropriate, in the review, and if necessary, revision of a child's IEP.

(4) Once the ARC has considered all the factors listed in this section the ARC shall include a statement on the IEP indicating the 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).

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

- (a) Positive behavioral interventions 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.
- (6) An ARC shall not be required to include information under one (1) component of a child's IEP that is already contained under another component of the child's IEP.
- (7) The IEP for each child shall include:
- (a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 KAR 3:303, or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
 - (b) A statement of measurable annual goals, including academic and functional goals, designed:
 - 1. Meet the child's needs that result from the disability to enable the child to be involved in and progress in the general curriculum as provided in the Kentucky Program of Studies, 704 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.
 - (c) A LEA's procedures may determine the use of benchmarks or short-term objectives for a child's IEP.
- (8) An IEP shall include a statement of the specially designed instruction and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable to be provided to the child, or on behalf of the child. 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 and without disabilities.
- (9) An IEP shall contain an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular classes.
- (10) An IEP shall contain a statement of any individual accommodations to be provided the child in order to participate in the state or districtwide 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.
- (11) 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.
- (12) 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.
- (13) An IEP shall include a statement of:
- (a) How the child's progress toward meeting the annual goals will be measured; and
 - (b) When periodic reports on the progress the child is making toward meeting the annual goals, (which may include the use of quarterly or other periodic reports concurrent with the issuance of report cards) will be provided.
- (14) At least one (1) year prior to the child reaching the age of majority, the IEP shall include a statement that the child has been informed of the child's rights under 707 KAR Chapter 1, and that the rights will transfer to the child upon reaching the age of majority.

(15) The IEP shall also include the requirements for transition services for eligible students as detailed in Section 7 of this administrative regulation.

Section 6. Program for Students who Transfer. (1) If a child with a disability transfers between LEAs 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 by the receiving LEA including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA adopts the previous IEP or develops, adopts, and implements a new IEP.

(2) If a child with a disability transfers from an LEA outside Kentucky to an LEA within Kentucky within the same academic year, and had an IEP in effect in the other state, the child shall be provided a free, appropriate public education by the receiving LEA including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP if the child is a child with a disability as defined in 707 KAR 1:280, Section 1(9).

(3) 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.

Section 7. Transition Services. (1) 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.

(2) 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.

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

(4) 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.

(5) 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.

Section 8. Private School Placements by the LEA. (1) Prior to 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.

(2) 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.

(3) 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.

(4) 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.

(5) An LEA that places a child with a disability in or refers a child to 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.

Section 9. IEP Accountability. (1) An 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 in achieving the goals, objectives, or benchmarks listed in the IEP.

(2) An LEA shall be responsible for including children with disabilities in the statewide assessment as provided in 703 KAR 5:070.

(3) The provisions of this administrative regulation shall not limit the parents' right to ask for revision of the child's IEP or to invoke due process procedures if the parents feel that good faith efforts are not being made. (26 Ky.R. 2135; 27 Ky.R. 160; 502; eff. 8-14-2000; 33 Ky.R. 3476; 34 Ky.R. 46; 553; 1726; eff. 11-5-2007; Crt eff. 11-16-2018.)