

707 KAR 1:340. Procedural safeguards and state complaint procedures.

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 procedural safeguards for children with disabilities and their parents and lists the requirements for filing a written complaint.

Section 1. Parent Participation in Meetings. (1) A parent of a child with a disability shall be afforded an opportunity to:

(a) Inspect and review all education records with respect to identification, evaluation, and educational placement of the child and the provision of FAPE to the child; and

(b) Participate in all ARC meetings concerning his child.

(2) An LEA shall provide parents a written notice of ARC meetings in accordance with this administrative regulation.

(3) A 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; or

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

(4) 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.

Section 2. Independent Educational Evaluation. (1) A parent of a child with a disability shall have a right to obtain an independent educational evaluation of the child.

(2) If a parent requests an independent educational evaluation, the 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.

(3) If a parent requests 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;
- (4) 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 subsection (3) of this section while waiting for a response from a parent; and
- (5) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the 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.
- (6) 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.
- (7) 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 educational evaluation, but not at public expense.
- (8) 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.
- (9) If a due process hearing officer, as part of a hearing, requests an independent educational evaluation, the cost of the evaluation shall be at public expense.

Section 3. Notice to Parents. (1) 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 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.
- (3) The notice required by subsections (1) and (2) of this section 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 that 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 C.F.R. 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 parents to contact to obtain assistance in understanding the provisions of this section.

(4) The notice required by subsections (1) and (2) of this section 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 the translation.

Section 4. Procedural Safeguards Notice. (1) 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 the 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.
- (2) The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 C.F.R. 300.504.

Section 5. Parental Consent. (1) 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.

(2) If the parent of a child with a disability refuses to consent to the initial evaluation or fails to respond to a request to provide consent, the LEA may pursue the initial evaluation by using the procedures in this administrative regulation 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.

(3) 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.

(4) In order to document the reasonable efforts taken by the LEA to discover the whereabouts of the parent(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 visits made to the parent's home or place of employment and the results of those visits.

(5) 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.

(6) 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 pro-

cess hearing.

(7) 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 subsection (4) of this section of this administrative regulation to show those efforts; and

(b) The parent failed to respond.

(8) Parental consent shall not be required before:

(a) Reviewing existing data as part of an evaluation or reevaluation; or

(b) Administering a test or other evaluation that is administered to all children unless consent is required of all parents before the administration of the test or evaluation.

(9) 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 IEA decides not to pursue the consent through due process procedures set out in Sections 9 and 11 of this administrative regulation 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.

Section 6. Representation of Children. (1) 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;

(b) The rights of the parents have been terminated in accordance with state law; or

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

(2) 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.

(3) 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 parents;

(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.

(4) The LEA shall keep a record of the reasonable efforts it made to discover the whereabouts of the parents, such as:

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

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

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

(5) 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 C.F.R. Part 300, and 707 KAR Chap-

ter 1, to make decisions about educational issues for a child.

(6) 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 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.

(7) 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.

(8) 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 this section.

(9) 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.

(10) 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.

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

Section 7. State Complaint Procedures. (1) The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 C.F.R. 300.151 through 300.153:

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

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

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

1. A proposal to resolve the complaint; and

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

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

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

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

(3) The complaint shall include:

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

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

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

(d) Name and residence of the 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 complaint.

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

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

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

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

(a) Technical assistance activities;

(b) Negotiations; or

(c) Corrective actions.

Section 8. Right to Mediation and Due Process Hearings. (1) An LEA and parent of a 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.

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

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

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

Section 9. Mediation Rights. (1) The mediation process, if chosen, shall:

(a) Be voluntary;

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

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

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

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

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

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

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

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

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

- (b) Held at a location that is convenient to both parties to the dispute.
- (5) In a mediation session in which a resolution is reached by the parties, a legally-binding written agreement shall be executed that:
 - (a) Sets forth the resolution and a timeline in which it shall be implemented;
 - (b) States that all discussions that occurred in the mediation process shall be confidential; and
 - (c) May not be used as evidence in any subsequent due process hearing or civil proceeding.
- (6) Both the parent and a representative of the LEA who has the authority to bind the LEA shall sign the agreement. The agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.
- (7) Mediation may address issues surrounding the education of the child, including ongoing alleged violations of IDEA, compensatory education, or any other issue related to the child's enrollment in the school district.

Section 10. Dispute Resolution. (1) Within fifteen (15) days of receiving notice of parental request for a due process hearing, the LEA shall convene a meeting with the parent and the relevant member or members of the ARC who have specific knowledge of the facts identified in the due process hearing request. The parent and the LEA shall determine the relevant ARC members to attend the resolution session. A representative of the LEA who has decision-making authority on behalf of the LEA shall also attend this meeting. An attorney for the LEA shall not attend the meeting unless an attorney accompanies the parent.

- (2) The purpose of this meeting is:
 - (a) To allow the parents to discuss their due process hearing request;
 - (b) To discuss the facts that formed the basis of the request; and
 - (c) To give the LEA an opportunity to resolve the complaint.
- (3) This meeting shall not take place if the parents and the LEA agree in writing to waive the meeting or agree to use the mediation process.
- (4) If the parties reach a resolution to the dispute, the parties shall execute a legally-binding agreement that is:
 - (a) Signed by both the parent and a representative of the LEA who has the authority to bind the LEA; and
 - (b) Is enforceable in any state court of competent jurisdiction or a district court of the United States.
- (5) The dispute resolution agreement may be voided by either party within three (3) business days of the agreement's execution.
- (6) If the LEA has not resolved the complaint to the satisfaction of the parents within thirty (30) days of the receipt of the due process hearing request, the due process hearing may occur.
- (7) The timeline for issuing a final decision pursuant to 34 C.F.R. 300.515 shall begin at the expiration of the thirty (30) day timeline referred to in subsection (6) of this section, except for adjustments allowed in subsections (11) and (12) of this section.
- (8) The failure of the parent who filed the due process hearing request to participate in the resolution meeting shall delay the timelines for the resolution process and the due process hearing until the meeting is held unless the parties have jointly agreed to waive the resolution process or use mediation.
- (9) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may request, at the conclusion of the thirty (30) day period, that a hearing officer dismiss the parent's due process hearing.

ing request.

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

- (a) Detailed records of telephone calls made or attempted and the results of those calls;
- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of any visits made to the parent's home or place of employment and the results of those visits.

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

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

- (a) Both parties agree in writing to waive the resolution meeting;
- (b) After either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible; or
- (c) If both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later the parent or the LEA withdraws from the mediation process.

Section 11. Hearing Rights. (1) The parent of a child with a disability or the attorney representing the child, or the LEA that files a request for a hearing shall provide notice to the Kentucky Department of Education, to request a hearing. The notice shall contain:

- (a) The name of the 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.

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

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

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

Section 12. Appeal of Decision. (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional 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 the date of the hearing officer's decision.

(2) 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.

(3) Except as provided in Sections 14 and 15 of this administrative regulation, during the pendency of any administrative or judicial proceeding, including the dispute resolution meeting the child involved in the hearing or appeal shall remain in the child's current educational placement, unless the LEA and the parent agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint in-

volves 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.

(4) 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.

Section 13. Discipline Procedures. (1) The ARC may consider any circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(2) 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).

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

(4) 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.

(5) After a child with a disability has been removed from the child's current placement for ten (10) school days in the same school year, educational services as described in subsection (6)(a) and (b) of this section shall be provided during any subsequent days of removal.

(6) A child with a disability who is removed from the child's current placement for more than ten (10) consecutive school days shall:

(a) Continue to receive a free, appropriate public education so as to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services, and modifications, that are designed to address the behavior violation so that it does not recur.

(7) The services described in subsection (6) of this section may be provided in an interim alternative educational setting.

(8) 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.

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

(10) If a removal is a change in placement because of disciplinary removals, the child's

ARC shall convene within ten (10) school days after the change of placement is made and shall determine the appropriate educational services for the child. 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.

Section 14. Manifestation Determination. (1) 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, shall convene a meeting to review all relevant information in the student's file, including the child's IEP, any teacher observations, teacher-collected data, and any relevant information provided by the parents to determine:

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

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

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

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

(4) 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 subsection (5) of this section.

(5) 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 sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the 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.

(6) On the date on which a decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of the code of student conduct, the LEA shall notify the parents of the decision and provide the parents with a copy of the procedural safeguards in accordance with Section 4 of this administrative regulation.

(7) The ARC of the child shall determine the interim alternative educational setting and the services for any child removed under Sections 13(4), (10) and 14(5) of this administrative regulation.

Section 15. Appeals from Placement Decisions. (1) The parent of a child with a disability

who disagrees with any decision regarding placement under Section 13 or 14 of this administrative regulation 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 contained in Sections 8 and 11.

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

(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.

(4) 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 subsection (3)(b) of this section, whichever occurs first, unless the parent and the LEA agree otherwise.

(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 filed; and

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

Section 16. Basis of Knowledge. (1) An 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 other supervisory personnel of the LEA.

(2) An LEA shall not be deemed to have knowledge that a child is a child with a disability if, after receiving information that the child may have a disability:

(a) The LEA conducted an evaluation and determined the child was not a child with a disability;

(b) The LEA determined an evaluation was not necessary and provided notice to the parents of these determinations; or

(c) The parents refused to consent to an evaluation or refused initial services.

(3) 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.

(4) 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.

Section 17. Reporting to Law Enforcement Agencies. (1) Notwithstanding any provisions of 707 KAR Chapter 1, an agency may report a crime committed by a child with a disability to

appropriate authorities.

(2) If 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 Educational Rights and Privacy Act, 20 U.S.C. Section 1232g.

Section 18. Incorporation by Reference. (1) "Request for a Due Process Hearing", February 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Exceptional Children Services, Department of Education, Capital Plaza Tower, 500 Mero Street, Eighth Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (26 Ky.R. 2139; Am. 27 Ky.R. 164; 765; eff. 9-11-2000; 33 Ky.R. 3480; 34 Ky.R. 51; 556; 1729; eff. 11-5-2007.)