

707 KAR 1:290. Free appropriate public education.

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, 6398

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 providing a free, appropriate, public education for children identified as eligible for special education services.

Section 1. Free Appropriate Public Education. (1) AN LEA shall make a free appropriate public education (FAPE) available to all children with disabilities aged three (3) to twenty-one (21) residing within its district's boundaries who have not received a high school diploma, including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year. FAPE shall be provided to each child with a disability even though the child has not failed or been retained in a course and is advancing from grade to grade based on the child's unique needs and not on the child's disability. An LEA shall not be required to provide FAPE to a student eighteen (18) years old or older, who is placed in an adult correctional facility if, in the educational placement prior to placement in the correctional facility, the student was not identified as a child with a disability and did not have an IEP.

(2) AN LEA shall be responsible for ensuring the rights and protections under 707 KAR Chapter 1 are given to children with disabilities referred to or placed in private schools and facilities by that LEA.

(3) State agencies charged with the responsibility of providing educational services to children with disabilities within their care shall provide those services in accordance with 707 KAR Chapter 1.

(4) If payment for services under 707 KAR Chapter 1 is to be provided by an agency other than the LEA, the LEA shall ensure the services are provided without delay even if there is a delay in the payment for those services.

Section 2. Residential Placement. If it is determined necessary by an ARC to place a child with a disability for educational purposes in a private residential educational program, the program, including nonmedical care and room and board, shall be provided by the LEA which convened the ARC. AN LEA may fulfill its responsibility under this section by providing the services directly or by contracting for those services.

Section 3. Proper Functioning of Hearing Aids. An LEA shall ensure that a hearing aid worn in school by a child with a hearing impairment is functioning properly. A LEA shall ensure that the external components of surgically implanted devices of children with disabilities are functioning properly; however, an LEA shall not be responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted.

Section 4. Program Options. An LEA shall ensure that all children with disabilities have available to them the variety of educational programs, services, and curriculum as described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to children without disabilities. These educational services may include art, music, industrial arts, consumer and family science education, career and technical education, and other educational services.

Section 5. Nonacademic Services. An LEA shall take steps, including the provision of supplementary aids and services as determined appropriate and necessary by the child's ARC, to provide all children with disabilities the nonacademic and extracurricular services and activities that give children with disabilities an equal opportunity for participation in those services and activities. These services and activities may include:

- (1) Counseling services;
- (2) Athletics;
- (3) Transportation;
- (4) Health services;
- (5) Recreational activities;
- (6) Special interest groups or clubs sponsored by the LEA;
- (7) Referrals to agencies that provide assistance to individuals with disabilities; and
- (8) Employment of students, including both employment by the LEA and assistance in making outside employment available.

Section 6. Physical Education. (1) Unless the provisions of subsection (2) of this section apply, an LEA shall make available to every child with a disability:

- (a) Physical education services, specially designed if prescribed in the child's IEP; or
- (b) The opportunity to participate in the regular physical education program available to children without disabilities.

(2) An LEA is not required to make available physical education services to a child with a disability if:

- (a) The child is enrolled full time in a separate facility in which case the agency responsible for the education of the child in that facility shall ensure the child receives appropriate physical education; or
- (b) The LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

Section 7. Assistive Technology. (1) AN LEA shall ensure that assistive technology devices or assistive technology services, or both, as defined in 707 KAR 1:280(3) or (4) are made available to a child with a disability if required as part of the child's special education, related services, or supplemental aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.

Section 8. Extended School Year Services. AN LEA shall ensure that extended school year services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis. In making this determination, the LEA shall not:

- (1) Limit the provision of extended year services to a particular category(s) of disability; or
- (2) Unilaterally limit the type, amount, or duration of those services.

Section 9. Prohibition of Mandatory Medication. LEA personnel shall not require a child to obtain a prescription for a substance covered by schedules I, II, III, IV, or V the Controlled Substance Act (21 U.S.C. 812(c)), as a condition of attendance in school, receiving an evaluation under 707 KAR 1:300, or receiving services under 707 KAR Chapter 1. However, school personnel may consult or share classroom-based observations with parents or guardians regarding student's academic, functional, or behavioral performance or regarding the need for evaluation to determine eligibility for special education services.

Section 10. Records Regarding Migratory Children with Disabilities. A LEA shall to transfer health and education records on migratory children with disabilities who move to other states in accordance with the No Child Left Behind Act, 20 U.S.C. 6398. (26 Ky.R. 2131; 27 Ky.R. 499; eff. 8-14-2000; 33 Ky.R. 3463; 34 Ky.R. 548; eff. 11-5-2007; Crt eff. 11-16-2018.)