

707 KAR 1:310. Determination of eligibility.

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 determination of eligibility for special education of children who have disabilities.

Section 1. Determination of Eligibility. (1) Upon analysis of intervention and assessment data, the ARC shall determine whether the child is a child with a disability as defined in Section 1(9) of 707 KAR 1:280 to the extent that specially designed instruction is required in order for the child to benefit from education. An LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) A child shall not be determined to be eligible if the determinant factor for that eligibility determination is:

(a) A lack of appropriate instruction in reading, including the essential components of reading instruction as established in the Elementary and Secondary Education Act, 20 U.S.C. 6301;

(b) A lack of appropriate instruction in math; or

(c) Limited English proficiency and the child does not otherwise meet eligibility criteria.

(3) In making eligibility determinations, an LEA shall draw upon information from a variety of sources, which may include:

(a) Response to scientific, research-based interventions;

(b) Vision, hearing, and communication screenings;

(c) Parental input;

(d) Aptitude and achievement tests;

(e) Teacher recommendations;

(f) Physical condition;

(g) Social or cultural background;

(h) Adaptive behavior; or

(i) Behavioral observations.

(4) An LEA shall ensure that information obtained from these sources as appropriate for each student, is documented and carefully considered.

(5) In making a determination under the category of mental disability, the ARC may apply a standard error of measure, if appropriate.

(6) If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child.

Section 2. Additional Procedures for Evaluating Children with Specific Learning Disabilities.

(1) The determination of whether a child suspected of having a specific learning disability is a child with a disability and whether the specific learning disability adversely affects educational performance shall be considered by the child's ARC. The ARC shall also include other professionals, relative to the area(s) of concern, such as a school psychologist, speech-language pathologist, or educational specialist.

(2) Any ARC convened to discuss a child with a suspected or documented specific learning disability shall be collectively qualified to:

(a) Conduct, as appropriate, individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, or social-emotional development;

(b) Interpret assessment and intervention data and apply critical analysis to that data;

(c) Develop appropriate educational and transitional recommendations based on the assessment data; and

(d) Deliver and monitor specially designed instruction and services to meet the needs of a child with a specific learning disability.

(3) The ARC may determine a child has a specific learning disability if:

(a)1. The child is provided with learning experiences and instruction appropriate for the child's age or state-approved grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303; and

2. The child does not achieve adequately for the child's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:

a. Oral expression;

b. Listening comprehension;

c. Written expression;

d. Basic reading skills;

e. Reading fluency skills;

f. Reading comprehension;

g. Mathematics calculation; or

h. Mathematics reasoning;

(b) The child fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303 in one or more of the areas identified in subparagraph (3)(a)2 of this section when assessed based on the child's response to scientific, research-based intervention; or

(c) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development, that is determined by the ARC to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with 707 KAR 1:300, Section 4.

(4) The ARC shall not identify a child as having a specific learning disability if deficits in achievement are primarily the result of:

(a) A visual, hearing, or motor impairment;

(b) Mental disability as defined in 707 KAR 1:280(37);

(c) Emotional-behavioral disability;

(d) Cultural factors;

(e) Environmental or economic disadvantage; or

(f) Limited English proficiency.

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

for the child.

(6) For a child suspected of having a specific learning disability, the ARC must consider, as part of the evaluation, data that demonstrates that:

(a) Prior to, or as a part of the referral process, the child was provided appropriate instruction in regular education settings, including that the instruction was delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parent.

(7) If the child has not made adequate progress after an appropriate period of time, during which the conditions in paragraphs (a) and (b) of this subsection have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered.

(8) An ARC shall develop documentation of a specific learning disability. This documentation shall contain a statement of:

(a) Whether the child has a specific learning disability;

(b) The basis for making that determination;

(c) The relevant behavior noted during the observation;

(d) The relationship of that behavior to the child's academic functioning;

(e) The educationally relevant medical findings, if any;

(f) Whether the child does not achieve commensurate with the child's age and ability;

(g) Whether there are patterns of strengths and weaknesses in performance or achievement or both relative to age, state-approved grade level standards, or intellectual development in one (1) or more of the areas described in subparagraph (3)(a)2 of this section, that require special education and related services; and

(h) The determination of the ARC concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; environmental, cultural factors; economic disadvantage; or limited English proficiency on the child's achievement level; and

(i) The instructional strategies used and the student-centered data collected based on the child's response to scientific, research-based intervention.

(9) This documentation shall include notification to the child's parents concerning the policies regarding:

(a) The amount and nature of student performance data that is collected and the general education services that are provided;

(b) Strategies for increasing the child's rate of learning; and

(c) The parents' right to request an evaluation.

(10) Each ARC member shall certify in writing whether the report reflects the member's conclusions. If it does not reflect the member's conclusion, the team member shall submit a separate statement presenting the member's conclusions. (26 Ky.R. 2134; 27 Ky.R. 158; 501; eff. 8-14-2000; 33 Ky.R. 3470; 34 Ky.R. 551; eff. 11-5-2007; Crt eff. 6-28-2019.)