

PROCEDURAL SAFEGUARDS

TIMELINES

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.

707 KAR1:320 Section 2 (2)
34 CFR 300.301 (c) (1) (i)

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

707 KAR1:320 Section 2 (3)
34 CFR 300.323 (c) (1)

Owen County School District (hereinafter called OCSD) ensures that after the receipt of initial parental consent for evaluation services, the referred child is evaluated. If the child is determined eligible by an ARC, an IEP is developed and implemented. The evaluation, IEP development, and initial implementation take place within 60 school days of the receipt of parental consent for evaluation.

Exception to the Timelines

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.

707 KAR1:320 Section 2 (5)
34 CFR 300.301 (d) (1) & (e)

Upon receiving the records of a student who is transferring to OCSD during the evaluation process, OCSD staff reviews the record and contacts the previous district to coordinate the completion of the evaluation. OCSD staff reviews the status of the child's evaluation and determines if the sixty (60) school day timeline can be met. OCSD staff **discusses with** the parent the progress of the child in the evaluation process and work together to agree on the timeline for completion of the evaluation. This can be formal or informal, not necessarily in an ARC meeting.

OCSD staff follows **Transmittal of Educational Records for Transfer Students** in procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**. (See also procedures for **Students Who Transfer During the Evaluation Process in EVALUATION** procedures.)

ARC MEMBERSHIP

OCSD establishes an Admission and Release Committee (ARC) with appropriate membership to address the process of identification, evaluation, placement of students, and the provision of a free appropriate public education for students with disabilities.

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 education curriculum for same aged peers;
- c. not less than one (1) special education teacher of the child or a special education teacher who has knowledge of the disability or suspected disability, or, if appropriate, at least one 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 also be a member of the team described in 707 KAR 1:320 Section 3 (1) (b-d);
- 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.

707 KAR 1:320 Section 3 (1)
34 CFR 300.321 (a)

At a minimum, the ARC meeting has in attendance the ARC Chairperson, a regular education teacher of the child (if the child is or may be participating in the regular education environment), and a special education teacher or provider. If evaluation information is to be discussed, one member is present to interpret the instructional implications of evaluation results.

Parent Participation in the ARC

The LEA shall ensure that the ARC for each child with a disability includes the parents of the child.

707 KAR 1:320 Section 3 (1) (a)
34 CFR 300.321 (a) (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.

707 KAR 1:340 Section 1 (1)
34 CFR 300.501 (a)

The parents of the child participate in discussions about the need for special education and related services and supplementary aids and services; and decide with the ARC how their child will be involved and progress in the general curriculum, and participate in State and district-wide assessments. The ARC considers the concerns of parents and the information provided regarding their child in developing and reviewing the child's IEP.

The parents participate by:

1. providing information about the child, including information about the child outside the school setting;
2. providing input for development of the IEP;
3. giving written permission for evaluation, initial placement, and reevaluation; and
4. providing support for implementation of the IEP.

ARC Chairperson Responsibility

The LEA shall ensure that the ARC for each child with a disability includes 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, and is knowledgeable about the general curriculum and the availability of the resources of the LEA.

707 KAR 1:320 Section 3 (1) (d)
34 CFR 300.321 (a) (4)

The principal or primary administrator at the building level is the assigned OCSD representative who is knowledgeable about the general education curriculum, qualified to supervise the provision of specially designed instruction, and able to commit personnel and fiscal resources for implementation of the IEP. The principal is responsible for the implementation of the ARC process in the school building. The principal ensures that all OCSD procedures are followed and services described in the IEP are provided at that school.

The ARC Chairperson ensures:

1. due process and procedural safeguards are followed;
2. the student representative is determined;
3. appropriate committee composition as documented by signatures on Conference Summary;
4. facilitation of group decision making, and if necessary makes a determination of the OCSD position when the ARC cannot agree;
5. receipt of written referrals for the ARC to review and analyze to determine if sufficient information is available for initiating a full and individual evaluation;
6. support for and implementation of ARC and IEP decisions;
7. communication with parents, notifying them of all ARC meetings;
8. information is obtained and disseminated to appropriate personnel;
9. notice of ARC meetings and contact to parents about the child's invitation to the meeting;
10. a Conference Summary recorder is designated;
11. records of conference proceedings are maintained; and
12. communication with all IEP implementers, ensuring that the IEP is accessible and they are informed regarding their specific responsibilities in implementation of the IEP.

The ARC Chairperson may designate other school staff committee members to assist in the implementation of these committee functions or procedures.

ARC Designee

If the building principal wishes to designate another individual to serve as ARC Chairperson, the principal sends a memorandum to the DoSE identifying the designee and specifying the qualifications of the individual to serve as ARC Chairperson.

The DoSE reviews the names of the proposed designee(s), and determines appropriate qualifications based on the following characteristics:

1. qualified to provide or supervise the provision of special education to meet the unique needs of children with disabilities;
2. knowledgeable about the general curriculum;
3. knowledgeable about the availability of resources of the public agency; and
4. is not a teacher of the child or youth.

The DoSE sends the approved names of appropriate designees to the Superintendent. The Superintendent obtains OCSB Board of Education approval and the designation is recorded in the Board minutes. The DoSE maintains a copy of the written approval. The DoSE makes sure that Board approval and training for the designee(s) occur before the designee serves in any capacity as the ARC Chairperson.

Special Education Teacher Determination and Responsibilities

The LEA shall ensure that the ARC for each child with a disability includes at least one special education teacher of the child, or, if appropriate, at least one special education provider of the child.

707 KAR 1:320 Section 3 (1) (c)
34 CFR 300.344 (a) (3)

The ARC Chairperson selects a special education teacher for the ARC for each child according to the purpose of the meeting, taking into consideration:

1. the qualifications of the teacher and the knowledge of the identified disability or suspected disability supported in the initial referral for possible special education and related services;
2. whether the special education teacher currently works with the child receiving special education and related services; and
3. whether the special education teacher may serve the child who is moving from one educational setting to another.

The Special Education Teacher:

1. assists the Committee in maintaining records of meeting procedures;
2. assists the Committee in conducting necessary evaluations of referred child;
3. assists the committee in determining eligibility of child for a program for exceptional children;
4. brings to the meeting statements of levels of educational performance, proposed goals, objectives/benchmarks, and specially designed instruction for the child;
5. facilitates the development of the IEP;

6. ensures the implementation of the IEP of children included on his/her caseload including the compilation of written documentation of child's progress and accomplishment of goals, objectives/benchmarks;
7. assists in communication with all IEP implementers, ensuring that the IEP is accessible and they are informed regarding their specific responsibilities in implementation of the IEP; and
8. summarizes and reviews the child's progress in a narrative written report and facilitates the revision of the IEP at the annual review meeting.

Regular Education Teacher

The LEA shall ensure that the ARC for each child with a disability includes 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 education curriculum for same aged peers.

707 KAR 1:320 Section 3 (1) (b)
34 CFR 300.321 (a) (2)

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.

707 KAR 1:320 Section 5 (5)
34 CFR 300.324 (a) (3)

The ARC Chairperson selects a regular education teacher to serve on the ARC for each child according to the purpose of the meeting, taking into consideration whether the teacher:

1. currently teaches the child;
2. initiated the referral;
3. can appropriately address the performance of the child in the general education program; or
4. will teach the child who is transitioning from one educational setting or program to another.

The regular education teacher is a member of the ARC if the child is, or may be, participating in the regular education environment. OCSD requires only one teacher to attend the ARC meeting. The regular education teacher who serves as a member of the ARC should be the teacher who is, or may be, responsible for implementing a portion of the IEP. If the child has more than one regular education teacher responsible for implementing a portion of the IEP, the ARC Chairperson may designate which teacher(s) will serve, taking into account the best interest of the child. Although not all the child's teachers may attend the ARC, the ARC Chairperson ensures each teacher is informed about the IEP prior to implementation.

The ARC Chairperson solicits written comments or input from teachers who work with the child, but whose attendance is not required at ARC meetings.

If a child does not have a regular education teacher, the ARC Chairperson selects a regular classroom teacher qualified to teach a child of his or her age.

The Regular Education Teacher:

1. submits written referral to ARC Chairperson;
2. designs, implements, and documents results of interventions and strategies in the regular education setting designed to address student problems;
3. assists in the determination of positive behavioral interventions and strategies for the child;
4. brings to the meeting statements of levels of educational performance as related to the Program of Studies and Core Content for Assessment;
5. assists in the development of the IEP, including determination of supplementary aids and services, program modifications or supports for school personnel to be provided for the child;
6. implements the IEP as appropriate; and
7. provides input on child's progress (maintaining monitoring data if appropriate) and the development and revision of the IEP.

Person who can Interpret Instructional Implications of Evaluation

The LEA shall ensure that the ARC for each child with a disability includes an individual who can interpret the instructional implications of evaluation results, who may be a member of the team.

707 KAR 1:320 Section 3 (1) (e)
34 CFR 300.321 (a) (5)

The ARC Chairperson arranges for a member of the multidisciplinary evaluation team, or other knowledgeable person who can interpret the instructional results of the evaluation, to attend the ARC meeting.

The person who can interpret evaluation:

1. provides information regarding needed areas of assessment;
2. assists in explaining assessment procedures;
3. interprets the instructional implications of evaluation results; and
4. provides input into the development and implementation of the IEP.

Additional ARC Members When a Child is Suspected of a Specific Learning Disability

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 707 KAR 1:320 Section 3.

707 KAR 1:320 Section 3 (5)
34 CFR 300.308 (b)

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 made 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.

707 KAR 1:310 Section 2 (1)
34 CFR 300.308 (b)

If a child is being assessed for a Specific Learning Disability, the ARC includes other professionals relative to the area(s) of concern. This may include a school psychologist, speech-language pathologist, or educational specialist.

Related Services Personnel

The LEA shall ensure that the ARC for each child with a disability includes related services personnel, as appropriate;

707 KAR 1:320 Section 3 (1) (g)
34 CFR 300.321 (a) (6)

Related service personnel may include, but is not limited to speech and language pathologists, physical or occupational therapists, adaptive physical education providers, assistive technology providers, counselors or psychologists, bus drivers, or transportation directors.

If the child's re-evaluation indicates the need for a specific related service, or a child has been receiving a related service, the ARC Chairperson ensures that a qualified provider of that service attends the ARC meeting, or provides a written recommendation (see procedures for **Excusal From ARC Meetings** in **EVALUATION** procedures) concerning service to be provided as related to goals, benchmarks/objectives, and specially designed instruction according to **DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM** in procedures for **IEP**.

Child with a Disability

The LEA shall ensure that the ARC for each child with a disability includes, if appropriate, the child.

707 KAR 1:320 Section 3 (1) (h)
34 CFR 300.321 (a) (7)

Child Age Fourteen (14) or Older

If the purpose of the ARC is to discuss transition services for a child with a disability as described in 707 KAR 1:320 Section 4 (3) & (4), the child shall be invited to the ARC.

707 KAR 1:320 Section 3 (4), Section 4 (3-4)
34 CFR 300.321 (b) (1)

The ARC Chairperson invites the youth who is in the eighth (8th) grade, or who is fourteen (14) years of age or older to participate in the ARC meeting if a purpose of the meeting is the consideration of transition service needs. The invitation to the parent shall indicate that the child is invited and that one of the purposes of the meeting is the planning of transition services.

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

707 KAR 1:320 Section 4 (4)
34 CFR 300.321 (b) (2)

The ARC Chairperson invites the youth who is sixteen (16) years of age or younger to participate in the ARC meeting if a purpose of the meeting is the consideration of post-school transition services. The invitation to the parent indicates that the child is invited and that one of the purposes of the meeting is the planning of transition services, and the identity of any other agency that is invited to send a representative.

The ARC Chairperson invites a child who is an emancipated child (see **DEFINITIONS**) to the ARC meeting. A child with a disability may attend the ARC meeting if appropriate. If possible, the ARC Chairperson and parents discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance would be helpful in developing the IEP, directly beneficial to the child, or both. OCSD informs the parent before each IEP meeting that the parent may invite their child to participate in the ARC meeting.

If a child elects not to attend the ARC meeting where post-school transition services are discussed, the child's teacher takes steps to ensure that the youth's preferences and interests are considered. This information may be gained from an interview with the student and from vocational assessments completed on the student according to Age Appropriate Assessments for Transition Purposes in procedures for **IEP**.

Child Age Eighteen (18) to Twenty-one (21)

When a child with a disability reaches the age of majority (age eighteen), 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.

707 KAR 1:340 Section 9 (6)
707 KAR 1:360 Section 10
34 CFR 300.320 (c)

In the case of a student who is age 18 or older (see **RIGHTS OF THE ELIGIBLE STUDENT** in procedures for **CONFIDENTIALITY**) the ARC Chairperson sends the notices of ARC directly to the student.

Other Individuals Knowledgeable about the Child at Discretion of Parent or OCSD

The LEA shall ensure that the ARC for each child with a disability includes an individual who has knowledge or special expertise regarding the child at the discretion of the parent or the LEA.

707 KAR 1:320 Section 3 (1) (f)
34 CFR 300.344 (6)

OCSD or the parent may invite other individuals knowledgeable about the child who may participate in the conference.

Agency Representatives Involved in Transition Planning

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 emancipate 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.

707 KAR 1:320 Section 3 (4)
34 CFR 300.321 (b) (3)

Agency representatives:

1. provide information about services of the agency and any issues of eligibility for service;
2. coordinate with school staff and suggest any needed areas of instruction; and
3. begin the process for service delivery.

Consent for Release of Information for Transition Services

Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 C.F.R. 300.321 (b)(3).

707 KAR 1:320 Section 3 (4)
KRS 160.720 (1)
34 CFR 300.321 (b) (3)
34 CFR 300.622 (b) (2)

OCSD obtains written parental consent before disclosing personally identifiable information to individuals or agencies other than those indicated on the disclosure without consent list. The Consent for Release of Information form provided by the OCSD is available in the Principal's Office of the school the child attends and in the office of the DoSE. Copies of the completed forms are maintained in the educational records of the specific child.

Early Childhood Transition Planning

If the purpose of the ARC 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.

707 KAR 1:320 Section 3 (6)
34 CFR 300.321 (f)

The ARC Chairperson invites the child's previous early intervention program provider to participate in the ARC meeting if a purpose of the meeting is the transition from early intervention services to preschool. The invitation to the parent shall indicate that the child is invited and that one of the purposes of the meeting is the planning of transition services. See also **Preschool Transition** in procedures for **IEP**.

EXCUSAL FROM ARC MEETINGS

A member of the ARC team 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 areas of curriculum or related services is not being modified or discussed at the ARC meeting.

707 KAR 1:320 Section 3 (2)
34 CFR 300.321 (e) (1)

A member of the ARC team 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 attendance 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.

707 KAR 1:320 Section 3 (3)
34 CFR 300.321 (e) (2)

Prior to the ARC meeting, the ARC Chairperson selects the appropriate members to invite as related to the purpose of the meeting (according to **ARC MEMBERSHIP** in procedures for **PROCEDURAL SAFEGUARDS**). The ARC Chairperson notifies all members (according to **NOTICE OF ARC MEETINGS** in procedures for **PROCEDURAL SAFEGUARDS**) to attend the ARC Meeting.

If a member of the ARC can not attend the meeting, or the attendance of the member is not necessary for the purpose of the ARC, the committee member may be excused from the ARC meeting if:

- a) the parent(s) and OCSD mutually agree;
- b) the decision is documented in writing; and
- c) the determination is made prior to the ARC meeting.

If the ARC member being dismissed has an area of curriculum or related service that

will be discussed or modified, the ARC member submits written input prior to the ARC meeting, that will be included and discussed during the meeting.

NOTICE OF ARC MEETINGS

Written Notice of ARC Meetings

An LEA shall ensure that one 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 meeting 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 upon time and place.

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.

707 KAR 1:320 Section 4 (1-2)
34 CFR 300.322 (a) & (b) (1) (ii)

The ARC Chairperson sends a written Notice of ARC to the parent and each member of the ARC at least seven (7) days before the ARC meeting. OCSD has a Notice of ARC form that contains the components listed above.

If a parent intends to bring legal counsel to represent their child during an ARC meeting, the parent shall inform the ARC Chairperson of this at least five (5) days prior to the ARC meeting. The ARC Chairperson has the right to either reschedule the ARC meeting or proceed with the meeting.

Content of ARC Notice

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

707 KAR 1:320 Section 4 (3)
34 CFR 300.321 (b) (1)

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

707 KAR 1:320 Section 4 (4)
34 CFR 300.321 (b) (2)

The ARC Chairperson invites the student aged fourteen (14) or older, or a child who is younger but determined appropriate by the ARC, to attend the meeting when a purpose of the ARC is to discuss transition needs or services.

Notice of ARC Meeting When There is a Safety Issue or Violation of Code of Conduct

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.

707 KAR 1:340 Section 3 (2)
34 CFR 300.503 (a)

On the date the decision is made to pursue a disciplinary change of placement, the ARC Chairperson sends the parent a notice of the proposed disciplinary action according to OCS D Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **NOTICE OF ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due to a violation of the Student Code of Conduct.

Parent Participation

An LEA shall ensure that one 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 meeting 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 upon time and place.

707 KAR 1:320 Section 4 (1)
34 CFR 300.322 (a)

The ARC Chairperson sends a copy of the Notice of ARC to the parent at least seven (7) calendar days before an ARC meeting. The ARC Chairperson works with the parent(s) to schedule the meeting at a mutually agreed upon time and place.

Methods to Ensure Parent Participation

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.

707 KAR 1:320 Section 4 (5)
34 CFR 300.322 (c)

If the parent is unable to attend, the OCS D staff ensure parent participation in ARC meetings by arranging for the parent to participate by telephone, video conference, or other methods.

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.

707 KAR 1:320 Section 4 (7)
34 CFR 300.322 (e)

If the parent's native language is other than English or if a different mode of communication is used, the ARC Chairperson arranges for translating, transcribing, or recording the meeting.

Conducting the ARC Meeting Without a Parent

An ARC meeting may be conducted without the parent in attendance if the LEA is unable to convince the parent that they 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 made to the parents' home or place of employment and the results of the visits.

707 KAR 1:320 Section 4 (6)
34 CFR 300.322 (d)

An 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; and
- (c) Detailed records of visits made to the parents' home or place of employment and the results of the visits.

707 KAR 1:340 Section 1 (3)
34 CFR 300.322 (d)

OCSD personnel keep detailed records including the date, time, and name of the person attempting the contact. The records, copies of any correspondence sent to the parent, and any response received, are filed in the child's special education record.

OCSD may conduct ARCs without the parent in attendance if there is verification that two notices have been sent to the parent (i.e., there is a minimum of two (2) attempts to contact the parent).

Conversations and Non-ARC Meetings without Parent Present

LEA staff shall not be prohibited 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.

707 KAR 1:340 Section 1 (4)
34 CFR 300.501 (b) (2)

OCSD staff may have discussions regarding the methodology, lesson plans, service coordination, and activities regarding children with and without disabilities. These discussions, which may or may not be pre-arranged, are not meetings for which parents receive notice and the opportunity to attend.

Electronic Notices

A parent of a child with a disability may elect to receive notices required by sections 300.503 (Prior Notice), 300.504 (Procedural Safeguards Notice), and 300.508 (Due Process Complaint) by an electronic mail communication, if the public agency makes that option available.

34 CFR 300.505

OCSD posts the Procedural Safeguards (i.e., Parent Rights) Notice and the Request for Due Process Hearing on the OCSD website.

The ARC Chairperson may ask the parent if they prefer to receive Notice of ARC Meetings and the Conference Summary by electronic means. If the parent agrees, the ARC Chairperson documents this in the student's special education folder.

ADMISSIONS AND RELEASE COMMITTEE MEETINGS

An LEA shall ensure that each child has an ARC which includes the membership in 707 KAR 1:320 Section 3 and is initiated and conducted for the purpose of developing, reviewing, and revising the IEP.

707 KAR 1:320 Section 2 (1)
34 CFR 300.324 (b) (1)

Each ARC follows due process procedures to make sure that students and their parents are guaranteed procedural safeguards. The ARC meets to:

1. Act on referrals according to procedures for **EVALUATION** including:
 - a. reviewing a written referral;
 - b. determining the need to evaluate; and
 - c. obtaining written parental consent to evaluate.
2. Act on evaluation according to procedures for **EVALUATION** and **ELIGIBILITY** including:
 - a. determining that a full and complete evaluation is conducted; and
 - b. determining if the child meets eligibility requirements for an educational disability.
3. Develop, review, or revise an IEP according to procedures for **IEP** including:
 - a. ensuring that the IEP meets regulatory requirements; and
 - b. reviewing and revising the IEP at least annually or as requested by any ARC member.
4. Determine placement according to procedures for **PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT** including:
 - a. determining placement in the least restrictive environment;
 - b. determining placement at least annually, or as the IEP is revised;
 - c. proposing or refusing to provide services based on the current and complete IEP in the place determined;
 - d. determining the need for written parental consent for services; and
 - e. ensuring that services are provided according to procedures for **IMPLEMENTATION AND SERVICE DELIVERY**.
5. Act on reevaluation according to procedures for **EVALUATION** and **IEP** including:
 - a. ensuring that a reevaluation is conducted at least every thirty-six (36) months, or as requested by any ARC member;
 - b. reviewing the individual evaluation information;
 - c. determining if the child continues to meet eligibility for a disability and
 - d. proposing or refusing continuation or change in placement.

At the beginning of each ARC meeting, the ARC Chairperson describes the ARC process which may include the following:

1. The tasks the ARC will complete during the meeting.
2. Each ARC member has an opportunity to share information.
3. ARC members discuss and consider information brought by any member, including parents, before any group decision is made.
4. Parents and school personnel have an active and equal role in the discussion and decisions about services for the child.
5. The ARC members discuss all information during the meeting.
6. For each piece of information presented, the ARC members use consensus to decide whether or not the information is adequate or if more information is needed.
7. The issues discussed and reasons for the decisions are written in the Conference Summary.
8. The ARC uses consensus for all decision making.

NOTICE OF PARENTAL PROCEDURAL SAFEGUARDS

Written Notice of Parental Procedural Safeguards (Parent Rights)

A copy of the procedural safeguards (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 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.

The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.

707 KAR 1:340 Section 4 (1-2)
34 CFR 300.504 (a)

The ARC Chairperson provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:

- (a) upon initial referral or parent request for evaluation;
- (b) upon 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.

Changes to an IEP

An ARC shall not have to be convened in order to make minor, non-programmatic, changes to an IEP, such as typographical errors, incorrect directory information about the student (i.e., birth date, age, grade, address, school, etc.), and other information required on the IEP that was agreed upon by the ARC but incorrectly recorded. If the LEA makes any minor, non-programmatic 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.

707 KAR 1:320 Section 2 (2)
34 CFR 300.324 (a) (6)

Upon discovery of any errors on the IEP, the ARC member that finds the error notifies the ARC Chairperson that changes need to be made. The ARC Chairperson allows minor, non-programmatic changes to an IEP to include:

- a. typographical errors;
- b. incorrect directory information about the student (i.e., birth date, age, grade, address, school, etc.); and
- c. other information required on the IEP that was agreed upon by the ARC but incorrectly recorded or failed to document (e.g., beginning/ending dates, amount of time for services, type of service, etc.).

Within ten (10) days of the changes, the ARC Chairperson provides to all ARC members a copy of the changes and an explanation of why they were made. If any ARC member disagrees, the member requests an ARC meeting to discuss the changes.

Audio or Video Recordings of ARC Meetings

The LEA has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings.

34 CFR Part 300 Appendix A, Q. 21

Before recording, the ARC Chairperson should ask if anyone opposes the use of an audio- or video-tape-recording of the meeting. Such opposition will be reflected in the conference summary.

OCSD has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at ARC meetings. The ARC Chairperson, in consultation with the DoSE, determines, on a case-by-case basis, the OCSD decision when a request is made for audio or video recording of any ARC meeting.

Any recording of an ARC meeting that is maintained by the OCSD is an "education record" as defined by the Family Educational Rights and Privacy Act. The recording is subject to confidentiality requirements of the regulations under both FERPA and 707 KAR 1:360, Confidentiality. The ARC Chairperson ensures that any such recording is maintained as a part of the child's special education record and the parent is granted access to the recording.

Written Notice of Proposed or Refused Action (Conference Summary)

OCSD has a Notice of Proposed or Refused Action (i.e., Conference Summary form) that includes all necessary components as follows.

The notice required for 707 KAR 1:340 Section 3 (1) 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 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 CFR Section 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 parent to contact to obtain assistance in understanding the provision of this section.

707 KAR 1:340 Section 3 (3)
34 CFR 300.503 (b)

The ARC Chairperson gives the parents a copy of the Conference Summary each time OCSD proposes or refuses to initiate, continue, or change the identification, evaluation, or placement of the child or provision of a free appropriate public education to a child.

Parents receive an initial copy of documentation formed at ARC meetings.

If the parent agrees with the ARC decision(s), the proposed action as described is implemented. If the parent was not present at the meeting, the school initiates the action described in the Conference Summary.

(1) Except for meetings concerning a disciplinary change in placement or a safety issue, an LEA shall provide a 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.

707 KAR 1:340 Section 3 (1) & (2)
34 CFR 300.503 (a)

On the date the decision is made to pursue a disciplinary change of placement, the ARC Chairperson sends the parent a notice of the proposed disciplinary action according to OCSD Board Policy, a notice of ARC Meeting, and a copy of the procedural safeguards according to procedures for **NOTICE OF ARC MEETINGS** in **PROCEDURAL SAFEGUARDS**. The notice is sent to the parent at least twenty-four (24) hours before any meeting concerning a safety issue or a change in placement due to a violation of the Student Code of Conduct. See also **CHANGE IN PLACEMENT FOR DISCIPLINARY REMOVALS** in procedures for **DISCIPLINE**.

Notices in Native Language or other Mode of Communication

The notice required by 707 KAR 1:340 Section 3 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 this translation.

707 KAR 1:340 Section 3 (4)
34 CFR 300.503 (c)

The ARC Chairperson determines the language or mode of communication used by the parent of the child and provides notice in that language or mode of communication unless it is clearly not feasible to do so. The native language of the parent of a child is the primary language used in the home (i.e., the language most frequently used for communication by the parent of the child). If the native language or mode of communication is not English, the ARC Chairperson informs the DoSE of the need for a translation or interpretation of the notice. The DoSE makes sure:

1. that the notice is translated to the parent in his native language or other mode of communication; and
2. that there is written evidence of the translation.

If OCSD can not obtain a translated form, the DoSE contacts the Kentucky Department of Education for support in obtaining the translations.

The DoSE obtains the necessary translation or interpretation. The DoSE maintains copies of all letters of correspondence involved in securing the necessary interpretation or translation of a notice, and a copy of the translation.

PARENTAL CONSENT

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.

707 KAR 1:340 Section 5 (1)
34 CFR 300.300 (a)

The ARC Chairperson makes sure that the parent of the child gives voluntary informed consent by reviewing the information with the parent and giving the parent of the child time to consider the request for consent.

Consent for Initial Evaluation

The ARC Chairperson obtains written parental consent before any procedures are used selectively with an individual child to determine if the child has a disability and needs special education and related services.

The OCSD Consent for Evaluation form and the Evaluation Plan includes the areas related to the suspected disability, (e.g., health, vision and hearing, motor abilities, social and emotional, general intelligence, academic performance, and communication status).

The written consent statement includes a place for the date and the parent's signature and states that the parent understands and agrees:

1. to a full and individual evaluation of the child in all areas related to the suspected disability by the multidisciplinary team; and
2. consent is given voluntarily.

The ARC Chairperson gives the request for Consent for Evaluation and the Evaluation Plan to the parent with the Conference Summary.

Parental consent shall not be required before:

- (i) reviewing existing data as part of an evaluation or a reevaluation; or
- (ii) administering a test or other evaluation that is administered to all children unless consent is required of parents of all children before administration of that test or evaluation.

707 KAR 1:340 Section 5 (8)
34 CFR 300.300 (d) (1)

Denial of Parent Consent for Initial Evaluation

If the parent of a child with a disability refuses consent for an 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 section (707 KAR 1:340) 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.

707 KAR 1:340 Section 5 (2)
34 CFR 300.300 (a) (3)

If the parent denies consent for an initial evaluation, the ARC Chairperson contacts the DoSE regarding the refusal. When parent and OCSD personnel disagree on consent for initial evaluation, the parties may request mediation, or either party may request a dispute resolution meeting or a due process hearing to obtain consent for the proposed evaluation (according to **MEDIATION, DISPUTE RESOLUTION, and DUE PROCESS HEARING** in procedures for **PROCEDURAL SAFEGUARDS**).

Consent When the Child is in the Custody of the State or Foster Child

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.

707 KAR 1:340 Section 5 (3)
34 CFR 300.300 (a) (2)

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(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.

707 KAR 1:340 Section 6 (1)
34 CFR 300.300 (a) (2)

OCS D does not require parental consent for initial evaluations for children who are in the custody of the state or who are in foster care when:

- a. despite reasonable efforts, OCS D cannot discover the whereabouts of the parent(s);
- b. the rights of the parent(s) have been terminated by a court of competent jurisdiction, which is on file in the student record; or
- c. OCS D discovers that the rights of the parent(s) to make educational decisions have been subrogated by a court of competent jurisdiction, OCS D personnel ask the individual appointed by the court to represent the child to give consent for the initial evaluation.

The ARC Chairperson follows procedures for **REPRESENTATION OF CHILDREN** in **PROCEDURAL SAFEGUARDS**.

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

707 KAR 1:340 Section 5 (4)
707 KAR 1:340 Section 6 (4)
34 CFR 300.322 (d)

OCS D personnel keep detailed records including the date, time, and name of the person attempting the contact. The records, copies of any correspondence sent to the parent, and any response received, are filed in the child's special education record.

OCS D conducts ARCs without the parent in attendance if there is written verification that the parent has been notified about the ARC meeting (i.e., there is a minimum of two (2) attempts to contact the parent).

Consent for Reevaluation

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 process hearing.

707 KAR 1:340 Section 5 (6)
34 CFR 300.300 (c) (1)

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 707 KAR 1:340 Section 5 (4) to show those efforts; and
- (b) the parent failed to respond.

707 KAR 1:340 Section 5 (7)
34 CFR 300.300 (c) (2)

If the parent does not respond to the consent for proposed reevaluation, the ARC Chairperson makes sure that attempts to obtain the consent are documented. If there are three (3) attempts to obtain the consent for the reevaluation with no success, the ARC Chairperson notifies the evaluation personnel to complete the evaluation.

Consent for Special Education and Related Services

The ARC Chairperson obtains written informed parental consent prior to the time a child receives special education and related services. OCSD uses a Consent for Special Education and Related Services form that includes a place for the date and the parent's signature and states that the parent understands and agrees:

1. to the provision of special education and related services in the least restrictive environment;
2. parental consent is given voluntarily; and
3. the consent statement explains that special education and related services will be provided as described in the IEP and in the placement(s) specified by the ARC in the Conference Summary.

The request for Consent for Special Education and Related Services is accompanied by the Conference Summary.

Once the parent gives consent for a child with a disability to receive special education and related services, OCSD does not require any additional consent from the parent of the child for placement to continue to receive special education and related services. Additional consent to provide services is not needed, even though the location(s) of the delivery of services may change.

Any changes in the special education program of the child after initial placement are subject to prior notice requirements (ARC Meeting and Conference Summary) but not subject to parental consent.

Denial or Revocation of Parent Consent for Services

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.

707 KAR 1:340 Section 5 (5)
34 CFR 300.300 (b) (3)

If the parent denies or fails to respond to a request for consent for provision of services, the ARC Chairperson contacts the DoSE regarding the refusal. OCSD does not “override refusal to consent to the initial provision of special education and related services”, therefore, does not request mediation or a due process hearing.

If consent is revoked, the DoSE and the building principal make sure that the child remains in the present educational placement during any due process hearings and appeals unless the parent and the ARC agree otherwise (according to **Child Status during Pendency of Judicial Proceedings** in procedures for **PROCEDURAL SAFEGUARDS**).

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 LEA decides not to pursue the consent through due process procedures set out in 707 KAR 1:340 Sections 9 and 11, 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.

707 KAR 1:340 Section 5 (9)
34 CFR 300.300 (b) (3)

Consent for Release of Information for Transition Services

Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 C.F.R. 300.321 (b)(3).

707 KAR 1:320 Section 3 (4)
KRS 160.720 (1)
34 CFR 300.321 (b) (3)
34 CFR 300.622 (b) (2)

OCSD obtains written parental consent before disclosing personally identifiable information to individuals or agencies other than those indicated on the disclosure without consent list. The Consent for Release of Information form provided by the OCSD is available in the Principal's Office of the school the child attends and in the office of the DoSE. Copies of the completed forms are maintained in the educational records of the specific child.

REPRESENTATION OF CHILDREN

The ARC Chairperson makes sure that each child is represented by verifying the location, legal status and availability of parents or guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child, or the provision of a free appropriate public education.

"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 decision 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 on-going, long-term parental relationship with the child, is willing to make the education 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.

707 KAR 1:280 Section 1 (43)
34 CFR 300.30

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.

707 KAR 1:340 Section 6 (2)
34 CFR 300.300 (a) (2)

Determination of Representative

No later than at the time of referral, the ARC Chairperson, through a review of the records of the child, determines if a child is:

1. emancipated (age 18 or married), and therefore represents him/herself in educational decision-making; or
2. to be represented by an adult, such as a parent, a guardian, a person acting as a parent, a foster parent, or a surrogate parent.

Biological or Adoptive Parents

Either parent, biological or adoptive, has parental rights unless there has been a judicial determination that limits or terminates their rights. Parents are considered available when a current residence or mailing address is identified by the ARC Chairperson.

If no parent is in residence, the ARC Chairperson obtains the name and address of either natural parent, or any documents affecting the parent's legal status regarding educational decision-making including informal arrangements or the result of a State agency or court action.

In the case of divorced parents who have joint legal custody, the ARC Chairperson assumes that the parent is present represents both. In the case of a divorced parent who has sole legal custody, that parent represents the child.

Legal Guardian

If the child is represented by a legal guardian, the ARC Chairperson obtains a copy of the court order determining the legal guardianship. The ARC Chairperson places a copy of the court order in the educational record of the child.

If there is no parent available, and the person caring for the child is doing so as the result of State agency or court action rather than through an informal arrangement that was voluntarily agreed to by the parent, the ARC Chairperson requires this person to provide information regarding the legal status of the rights of the parent with respect to the child. This person does not qualify as the educational representative unless the person is a private individual who can produce a court order that he or she has been granted guardianship of the child. Unless the person can produce a court order that he or she is a private (as opposed to state-appointed) guardian, such a person may not represent the child (e.g., sign permission or other due process forms) and, absent written parental permission, is not allowed access to the educational records of the child.

Person Acting As a Parent

If the ARC Chairperson determines there is no parent available and the person with whom the child resides is a family member, friend, or other person with whom the parent has made an informal arrangement to care for the child without state agency or court intervention, the ARC Chairperson determines this is a person "acting as a parent" and as such has all the rights of a parent until the parent reappears to reclaim his or her rights. OCSD uses the "Authorization for Appointment of a Representative for Educational Decisions" form or "Statement of Authorization for Representation" form to document the parental representative.

A person "acting as a parent" is a relative of the child or a private individual allowed to act as the parent of a child by the natural parents or guardians. For example, a grandparent, neighbor, governess, friend, or private individual caring for the child with the written approval of the parent or guardian of the child would qualify as a "person acting as a parent".

Commitment to CFC or DJJ when Parental Rights are not Terminated

If the child has been committed to the Cabinet for Families and Children or the Department of Juvenile Justice and parental rights have not been terminated, the ARC Chairperson involves the biological or adoptive parent in education decision-making and no surrogate parent is assigned.

Commitment to CFC or DJJ when Parental Rights are Terminated

"Ward of the state" means a child who has been committed to the Cabinet for Families and Children (CFC) or the Department of Juvenile Justice (DJJ) through a legal process, whether the commitment is voluntary or non-voluntary and the biological or adoptive parents rights have been terminated.

707 KAR 1:280 Section 1 (66)

If the ARC Chairperson determines that the child is a ward of the State (i.e., parental rights have been terminated by the court), the ARC Chairperson immediately contacts the DoSE and obtains a copy of the court order verifying that the child is a ward of the State. The ARC Chairperson files the copy of the court order into the educational record of the child. The DoSE appoints a surrogate parent.

In instances that involve protective custody of the child, CFC may inform the ARC Chairperson that parents must not learn information regarding the whereabouts of their child. In such cases, the ARC Chairperson requires that the CFC representative provide OCSO a court order that prohibits parent involvement with the child. A copy of the order is filed in the child's records, and the DoSE appoints a surrogate because the child's parents are unavailable.

Foster Parent

The ARC Chairperson verifies that the child resides in a foster home or is otherwise in custody of a State agency.

If the child is placed with foster parents, the ARC Chairperson determines if parental rights have been terminated. If parental rights have not been terminated, the ARC Chairperson follows the procedures for **REPRESENTATION OF CHILDREN in PROCEDURAL SAFEGUARDS**, Natural or Adoptive Parents or Legal Guardian. If no parent is known, their whereabouts cannot be determined, or parental rights have been terminated, the DoSE may assign the foster parent as a surrogate parent in accordance with procedures.

In the event parent's rights have been terminated, the foster parent may act as parent without the need for appointment as surrogate parent under the following conditions:

1. the foster parent has an on-going, long-term parental relationship with the child;
2. the foster parent is willing to make the educational decisions required of parents under special education regulations; and
3. the foster parent has no interest that would conflict with the interests of the child.

Age of Majority

When a child with a disability reaches the age of majority (age eighteen), 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.

707 KAR 1:340 Section 6 (11)
34 CFR 300.520 (a)

OCSD personnel assume the youth is considered able to make informed decisions at age eighteen unless the parent provides the school with a court order declaring the student legally incompetent or the student voluntarily agrees to allow the parent to continue to have educational decision making authority.

Surrogate Parent

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 parent;
- (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.

707 KAR 1:340 Section 6 (3)
34 CFR 300.515 (a)

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 CFR Part 300, and 707 KAR Chapter 1 to make decisions about educational issues for a child.

707 KAR 1:340 Section 6 (5)
34 CFR 300.519 (b)

If the ARC Chairperson determines the child is represented by a parent or legal guardian, no surrogate is needed. The DoSE does not assign a surrogate parent to an emancipated individual.

The ARC Chairperson notifies the DoSE that a surrogate parent may be needed when:

1. no one can be identified who meets the criteria of "parent";
2. a parent is identified but efforts, including registered mail to the last known address, fail to locate the parent; or
3. the child is a ward of the State (i.e., all parental rights have been terminated by a court of competent jurisdiction); or
4. the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act.

The ARC Chairperson contacts an eligible relative to determine if the person is willing to serve as a surrogate if the parent of a child is unavailable to serve as the representative of the child.

If the ARC Chairperson informs the DoSE that there is no caregiver or relative eligible and willing to serve as surrogate, the DoSE selects a surrogate to serve as the educational representative for the child.

Unaccompanied Homeless Youth

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 707 KAR 1:340 Section 6.

707 KAR 1:340 Section 6 (8)
34 CFR 300.519 (f)

If the student is an unaccompanied homeless youth, the DoSE attempts to identify the student representative according to the **Determination of Representative** in procedures for **PROCEDURAL SAFEGUARDS**.

The ARC Chairperson, in consultation with the DoSE, may assign staff from the emergency or transitional shelters, independent living programs, or outreach programs to act as a *temporary* surrogate parent until the DoSE can arrange for the assignment of a surrogate parent who meets all of the required criteria.

Criteria for Selection of Surrogate Parent Volunteers

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 public 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.

707 KAR 1:340 Section 6 (6)
34 CFR 300.519 (d)

After determining if a child needs a surrogate parent, the DoSE selects surrogate parents based on the following:

1. the person is not an employee of the Kentucky Department of Education, the LEA, or any other public agency that is involved in the education or care of the child;
2. the person does not have an interest that conflicts with the interests of the child;
3. the person has knowledge and skills that ensure adequate representation of the child.

A conflict of interest exists when it appears that the person being considered:

1. might benefit personally or professionally from decisions regarding the child; or
2. might be recruited to make decisions which might affect policy in which the person has a personal or professional interest.

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.

707 KAR 1:340 Section 6 (7)
34 CFR 300.519 (e)

The DoSE maintains a list of people who are willing to serve as Surrogate Parents. The DoSE reviews and updates the list annually.

Assignment of Surrogate Parent Volunteers

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.

707 KAR 1:340 Section 6 (9)
34 CFR 300.519 (h)

Not more than thirty (30) days after the determination that a child needs a surrogate parent, the DoSE selects a surrogate parent and asks the surrogate to sign a statement of commitment and acceptance. The commitment reads as follows: "I will:

1. acquaint myself with the child and his or her educational needs;
2. be accessible to the child and school personnel as needed;
3. represent the educational interests of the child to the best of my ability;
4. have no other vested interests that would conflict with my allegiance to the child;
and
5. keep confidential the information in the educational records of the child."

Upon receipt of the individual's signed indication of willingness to serve as surrogate, the DoSE enters the name and address of the surrogate in the educational record of the child and informs the ARC Chairperson that a surrogate has been selected.

Surrogate Parent Training

The DoSE provides information to persons selected as surrogate parents to assure these persons have sufficient knowledge and skills to effectively represent the child.

The information includes:

1. the role of the surrogate parent;
2. the rights and responsibilities of parents of children with disabilities;
3. available resources for additional information and assistance;
4. procedures to follow to be excused from appointment when there is a possibility of a potential conflict of interest;
5. conditions for termination as a surrogate; and
6. notification that the surrogate has the right to represent the child in all matters related to the educational rights of the child.

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.

707 KAR 1:340 Section 6 (10)
34 CFR 300.519 (g)

The ARC Chairperson and DoSE make sure that the surrogate parent assigned to a child represents the child in all decision-making processes including, identification, evaluation, placement, and the provision of FAPE.

Termination of a Surrogate Parent Assignment

The DoSE determines the surrogate is no longer needed according to the following criteria:

1. the "parent" becomes known or is located;
2. upon emancipation of the youth;
3. the surrogate no longer meets the qualifications and criteria for being a surrogate parent; or
4. the surrogate is not fulfilling his or her responsibilities.

The DoSE sends written notice to the surrogate informing the surrogate of the termination and indicating the reasons for termination. A copy of the letter is maintained in the files of the DoSE.

STATE COMPLAINT PROCEDURES

A copy of the procedural safeguards (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 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.

The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.

707 KAR 1:340 Section 4 (1-2)
34 CFR 300.504 (a)

The ARC Chairperson provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:

- (a) upon initial referral or parent request for evaluation;
- (b) upon 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.

The right to file a complaint with the Kentucky Department of Education and the procedures for filing, including the information required and timelines for resolution are included in the Parent's Rights document and the *Kentucky Department of Education Special Education Procedures Manual*, November 2000.

Right to File a Complaint

Any organization or individual including someone from outside the state may file a signed written complaint under 707 KAR 1:340 Section 7.

707 KAR 1:340 Section 7 (2)
34 CFR 300.153 (a)

(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 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.

707 KAR 1:340 Section 7 (3-4)
34 CFR 300.153 (b) & (d)

Procedures for Addressing the Complaint

The following procedures shall apply to the Kentucky Department of Education as to written complaints submitted pursuant to 34 CFR 300.151 through 300.153:

- (a) the Kentucky Department of Education shall have 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;
 - 2. an opportunity for the parent who has filed the complaint and the LEA to voluntarily engage in mediation;
- (d) the department shall review all relevant information; and
- (3) 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.

707 KAR 1:340 Section 7 (1)
34 CFR 300.153 (a)

The Kentucky Department of Education shall allow an extension of the time limit under 707 KAR 1:340 Section 7 (1) 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..

707 KAR 1:340 Section 7 (6)
34 CFR 300.152 (b) (1)

When the DoSE receives written notice from KDE of any complaint filed, the DoSE informs the Superintendent. The DoSE and the Superintendent decide if the district will conduct its own investigation or provide KDE/DECS with the relevant documents and allow KDE/DECS to conduct the investigation.

Right to Appeal Written Decision from KDE/DECS

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.

707 KAR 1:340 Section 7 (5)
34 CFR 300.660 (a) (1) (ii)

Implementation of Final Decision

The KDE 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.

707 KAR 1:340 Section 7 (7)
34 CFR 300.152 (b) (2)

MEDIATION PROCESS

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.

707 KAR 1:340 Section 8 (1)
34 CFR 300.506 (a)

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 707 KAR 1:340 Section 8 and Section 11 or 34 CFR Section 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.

707 KAR 1:340 Section 9 (1)
34 CFR 300.506 (b) (1)

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.

707 KAR 1:340 Section 9 (2)
34 CFR 300.506 (b) (3)

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

707 KAR 1:340 Section 9 (3)
34 CFR 300.506 (b) (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.

707 KAR 1:340 Section 9 (4)
34 CFR 300.506 (b) (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.

707 KAR 1:340 Section 9 (5)
34 CFR 300.506 (b) (6-7)

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.

707 KAR 1:340 Section 9 (6)
34 CFR 300.506 (b) (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.

707 KAR 1:340 Section 9 (7)
34 CFR 300.506 (a)

OCSD may offer mediation to a parent as an option to settle differences concerning the identification, evaluation, educational placement, or the provision of a free appropriate public education. The ARC Chairperson or DoSE explains to the parent that mediation is not a required process, but is offered by OCSD to settle differences or when a due process hearing is requested. If the parents and OCSD agree to mediate the issue, OCSD and the parent jointly submit a written request to KDE for mediation.

OCSD uses the procedures and forms in the *Kentucky Department of Education's Special Education Procedure Manual*, November 2000 and *Mediation for Students with Disabilities*, November 1999 to begin the process for mediation.

DISPUTE RESOLUTION

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.

707 KAR 1:340 Section 10 (1)
34 CFR 300.510 (a)

Within fifteen (15) days of receiving notice of a parent request for a due process hearing, the DoSE and Superintendent contact the Board Attorney to schedule a meeting with the parent. The DoSE and the parent(s) determine the OCSD personnel who have knowledge about the facts as identified in the due process hearing request, and the DoSE arranges for the staff to attend the meeting. The OCSD Board Attorney does not attend the meeting unless the parent is requesting the attendance of their attorney.

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.

707 KAR 1:340 Section 10 (2)
34 CFR 300.510 (a) (2)

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.

707 KAR 1:340 Section 10 (3)
34 CFR 300.510 (a) (3)

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.

707 KAR 1:340 Section 10 (4)
34 CFR 300.510 (d)

The DoSE places a copy of the resolution in the student's special education record.

The dispute resolution agreement may be voided by either party within three (3) business days of the agreement's execution.

707 KAR 1:340 Section 10 (5)
34 CFR 300.510 (e)

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.

707 KAR 1:340 Section 10 (6)
34 CFR 300.510 (b)

The timeline for issuing a final decision pursuant to 34 CFR 300.515 shall begin at the expiration of the thirty (30) day timelines referred to in 707 KAR 1:340 Section 10 (6), except for adjustments allowed in 707 KAR 1:340 Sections 11 and 12.

707 KAR 1:340 Section 10 (7)
34 CFR 300.510 (b) (2)

(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 request.

707 KAR 1:340 Section 10 (8 & 9)
34 CFR 300.510 (b) (3-4)

If the parent refuses to participate in the resolution process, the timelines for the process and hearing are delayed. If OCSD can not obtain the participation of the parent in the resolution process, OCSD Board Attorney notifies the due process hearing officer of the parent's failure to participate.

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 visits made to the parents' home or place of employment and the results of the visits.

707 KAR 1:340 Section 10 (10)
34 CFR 300.322 (d)

OCSD personnel keep detailed records including the date, time, and name of the person attempting the contact. The records, copies of any correspondence sent to the parent, and any response received, are filed in the student's special education record.

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 CFR 300.515.

707 KAR 1:340 Section 10 (11)
34 CFR 300.510 (b) (5)

The forty-five (45) day timeline for the due process hearing in 34 CFR 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 that parent or the LEA withdraws from the mediation process.

707 KAR 1:340 Section 10 (12)
34 CFR 300.510 (c)

DUE PROCESS HEARING

OCSD or a parent may initiate a due process hearing on any matter concerning the identification, evaluation, placement or provision of a free appropriate public education.

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 refusal to initiate or change the identification, evaluation, or educational placement of the child.

707 KAR 1:340 Section 8 (2)
34 CFR 300.507 (a)

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

707 KAR 1:340 Section 8 (3)
34 CFR 300.507 (a) (2)

OCSD or a parent may initiate a due process hearing on any matter concerning the identification, evaluation, placement or provision of a free appropriate public education.

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.

707 KAR 1:340 Section 8 (4)
34 CFR 300.506 (a)

If a parent initiates a due process hearing or requests the information, the ARC Chairperson provides the parent a list of free or low-cost legal and other relevant services available in the OCSD area.

A copy of the procedural safeguards (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 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.

The procedural safeguards notice shall include a full explanation of all the procedural safeguards available under 707 KAR Chapter 1 and 34 CFR Section 300.504.

707 KAR 1:340 Section 4 (1-2)
34 CFR 300.504 (a)

The ARC Chairperson provides a copy and full explanation of the Parent Procedural Safeguards document at each annual review and:

- (a) upon initial referral or parent request for evaluation;
- (b) upon 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.

Note: Hearing rights for children unilaterally placed in private schools by their parents are limited to Child Find, evaluation, and reevaluation issues. See procedures for **CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.**

Hearing Requests

The parent of a child with a disability or the attorney representing the child 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.

707 KAR 1:340 Section 11 (1)
34 CFR 300.508 (b)

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 for a due process hearing.

707 KAR 1:340 Section 11 (2)
34 CFR 300.508 (a)

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 707 KAR 1:340 Section 11 (1). This notice shall be provided to the other party and to the Kentucky Department of Education.

707 KAR 1:340 Section 11 (3)
34 CFR 300.508 (a)

The party requesting the hearing (the parent, the parent's authorized agent, or OCSD) submits “Request for a Due Process Hearing” form to the Director, Division of Exceptional Children Services, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601. If OCSD requests the due process hearing, the Superintendent and DoSE submit the hearing request. The hearing request states:

1. the name of the child;
2. the address of the residence of the child;
3. the name of the school the child is attending;
4. a description of the nature of the problem; and
5. facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

If, after OCSD requests a due process hearing, OCSD personnel and the parent come to an agreement on the issue(s) presented in the hearing request, the party requesting the hearing submits a letter to the hearing officer and KDE requesting cancellation of the hearing request.

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

707 KAR 1:340 Section 11 (4)

EXCEPTIONAL CHILDREN APPEALS BOARD

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 date of the hearing officer's decision.

707 KAR 1:340 Section 12 (1)
34 CFR 300.510 (b) (1)

Either party involved in the hearing regarding the identification, evaluation, placement, or provision of free appropriate public education of a child with disabilities may appeal the decision of the hearing officer. To request an appeal, the party sends, by certified mail, within thirty (30) calendar days of the hearing officer's decision, a written request for an appeal to the Exceptional Children Appeals Board, Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601. The requesting party also sends a copy of the appeal to the opposing party.

Civil Action

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.

707 KAR 1:340 Section 12 (2)
34 CFR 300.514 (d)
34 CFR 300.516 (a)

Child Status during Pendency of Judicial Proceedings

Except as provided in 707 KAR 1:340, Sections 14 and 15, 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 parent and the LEA agree to another placement. However, the child shall not be required to remain in the child's current educational placement if the complaint involves 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.

707 KAR 1:340 Section 12 (3)
34 CFR 300.518 (a) & (c)

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.

707 KAR 1:340 Section 12 (4)
34 CFR 300.518 (b)

If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

34 CFR 300.518 (d)

During the pendency of any administrative proceedings (e.g., due process hearing, appeal to the Exceptional Children Appeals Board) or judicial proceedings (i.e., civil action brought under IDEA), OCSD ensures that the child remains in the current educational placement, unless OCSD and the parent agree otherwise. In the case of a weapon offense, drug offense, or incident involving a threat to the safety of self or others, the student remains in the alternative placement until the discipline procedures are completed according to **VIOLATIONS FOR DRUGS, WEAPONS, OR BEHAVIOR INDICATING A STUDENT IS DANGEROUS TO SELF OR OTHERS** in procedures for **DISCIPLINE**.

If the complaint involves a child who is transitioning from the early intervention program into preschool for initial services, OCSD provides any services the ARC agreed upon prior to the due process hearing request.

If the administrative or judicial proceedings involve an application for initial admission to public school, OCSD places the child in an age and grade appropriate placement, with the consent of the parent, until the completion of the proceedings.