

House Bill 563 (2021 Regular Session)

Nonregulatory Guidance: Considerations for Students with Disabilities

Overview

The Kentucky General Assembly passed [House Bill 563 \(HB 563\)](#) during the 2021 Regular Session and it became law on June 29, 2021. HB 563, now codified into the Kentucky Revised Statutes (KRS), addresses two educational choice issues: provisions for the creation and funding of district policies to permit nonresident pupil enrollment, and the Education Opportunity Account Act (EOA Act). This non-regulatory guidance addresses only the impact of nonresident pupil enrollment policies on students with disabilities, including an overview of the provision of a free appropriate public education (FAPE) and other frequently asked questions (FAQ). For additional general information, please see the [Kentucky Department of Education's \(KDE's\) Nonresident Pupil Enrollment Policy Guidance - HB 563](#).

Provision of a Free Appropriate Public Education (FAPE)

All students with disabilities are entitled to a free appropriate public education (FAPE) under the provisions of the Individuals with Disability Education Act (IDEA) and the Kentucky Administrative Regulations (KAR) for Special Education Programs ([707 KAR Chapter 1](#)). Special education is the specially designed instruction and related services required to meet unique needs and provide a FAPE to a student identified with a disability.

Special education and related services must be provided at no cost to the student or student's parent, as defined in [707 KAR 1:002, Section 1\(56\)](#), and in a student's least restrictive environment (LRE). Special education and related services may be provided in a variety of settings based upon student need, including but not limited to the regular classroom, a special classroom, a special school or a hospital.

Under HB 563, local school boards are required to adopt policies allowing nonresident student enrollment. The district policy will outline the timelines and procedures for students to enroll as nonresident pupils, as well as the term of enrollment. Once a nonresident student is enrolled in the school district, that student is accounted for the same as resident students. Therefore, the district in which a nonresident student is enrolled is responsible for the provision of FAPE for the length of the student's term of enrollment.

Frequently Asked Questions (FAQ)

Who is responsible for:

Child Find	The student’s district of residence is responsible for Child Find (707 KAR 1:300, Section 1). When a student enrolls as a nonresident pupil in a district, that receiving district becomes the student’s district of residence for the length of the enrollment term as outlined by local district policy and assumes responsibility for Child Find. If a student completes an enrollment term and is not re-enrolled as a nonresident pupil, Child Find responsibility returns to the district in which the child resides.
Evaluations	The district in which a child is enrolled is responsible for the provision of FAPE, including evaluation and eligibility determination for students with a suspected disability following the requirements in 707 KAR 1:300 and 707 KAR 1:310 . Once the local education agency (LEA) has parental consent for an evaluation, the LEA has 60 school days to complete the evaluation and determine the student’s eligibility for special education and related services. This 60-day timeline does not apply to a student who moves to a new LEA after consent for the evaluation is obtained but before the evaluation is completed, if the new LEA is making sufficient progress to complete the evaluation and the parent agrees to a specific timeline for completion [707 KAR 1:320, Section 2(5)(a)].
Transportation	If a student requires special transportation in order to access FAPE, the district in which the nonresident student is enrolled is responsible for providing the special transportation for the length of the term of enrollment. If special transportation is not required for the provision of FAPE for a nonresident student, then the student is entitled to the same access to transportation afforded to other nonresident students without disabilities.
Transition Services	Transition services included in a student’s individual education program (IEP) are the responsibility of the student’s enrolled district, the same as any other special education or related services. Admissions and Release Committees (ARCs) should plan carefully to ensure students who are enrolled as nonresident students are able to access appropriate transition services, such as work-based learning opportunities, despite attending school in a community in which the student does not physically reside.
Alternate Assessments	In most circumstances, a student will participate in all parts of the Alternate Kentucky Summative Assessment (Alternate KSA) in the district in which they are enrolled at the time the test is administered. If a student’s enrollment

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	changes during or between the two Alternate KSA testing windows, please contact the Office of Assessment/Accountability (OAA) for guidance.
Extended School Year Services (ESY)	The district in which a student is enrolled is responsible for the provision of ESY services. If a student changes enrollment districts during a school break in which ESY services will be provided, districts should follow established procedures for transfer students. Please see “What Happens When: a student with an existing IEP becomes a nonresident pupil” on Page 3 of this document for more information on students transferring between LEAs. For additional guidance on ESY and highly mobile students, please see the Office of Special Education Programs (OSEP)’s Dear Colleague Letter on Education for Highly Mobile Children (July 19, 2013) .

What happens when:

A student with an existing IEP becomes a nonresident pupil.	Districts should follow the existing procedures for students who transfer between LEAs within Kentucky. Pursuant to 707 KAR 1:320, Section 6 (1) , when a child with a disability transfers between LEAs and has an IEP in effect in Kentucky, “the child shall be provided a free, appropriate public education by the receiving LEA, including services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving LEA adopts the previous IEP or develops, adopts and implements a new IEP.”
A student enrolled in an alternate program transfers to a new LEA.	Districts should follow existing procedures for students who transfer between LEAs within Kentucky and provide “services comparable to those provided in the previous IEP” [707 KAR 1:320, Section 6 (1)]. If the student’s placement in an alternate program was determined by an ARC to be the student’s LRE, the receiving district should maintain the student’s LRE and enroll the student in a comparable alternate program. If a comparable alternate program is not available, the receiving district should convene an ARC meeting to determine how to ensure the provision of FAPE in the student’s LRE within the district’s available programs.
A district reaches the nonresident enrollment capacity.	Under KRS 158.120 , district policy “shall not discriminate between nonresident pupils, but may recognize enrollment capacity, as determined by the local school district.” If the available district capacity is insufficient to enroll all nonresident students who apply to attend, the district nonresident student policy should outline the method used to determine enrollment.

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<p>A nonresident student's enrollment privileges are revoked before the student's term of enrollment is complete.</p>	<p>As discussed in the Kentucky Department of Education's (KDE's) Nonresident Pupil Enrollment Policy Guidance - HB 563 document, in <i>G.C. v. Owensboro Pub. Sch.</i>, 711 F.3d 623, 2013, the U.S. Court of Appeals for the Sixth Circuit held that nonresident pupils are entitled to the due process provisions of KRS 158.150, Suspension or Expulsion of Pupils, prior to removal from the school district once the academic year has commenced. For students with disabilities, districts also must follow the discipline and manifestation determination procedures outlined in 707 KAR 1:340, Sections 13 and 14 when removing a student from their educational placement for violation of the code of student conduct. For guidance on specific student situations, please contact KDE's Office of Special Education and Early Learning (OSEEL).</p>
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