

The Individuals with Disabilities Education Act (IDEA) Part B

SPECIAL EDUCATION PROCESS

FOR IDENTIFYING, EVALUATING AND DETERMINING ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

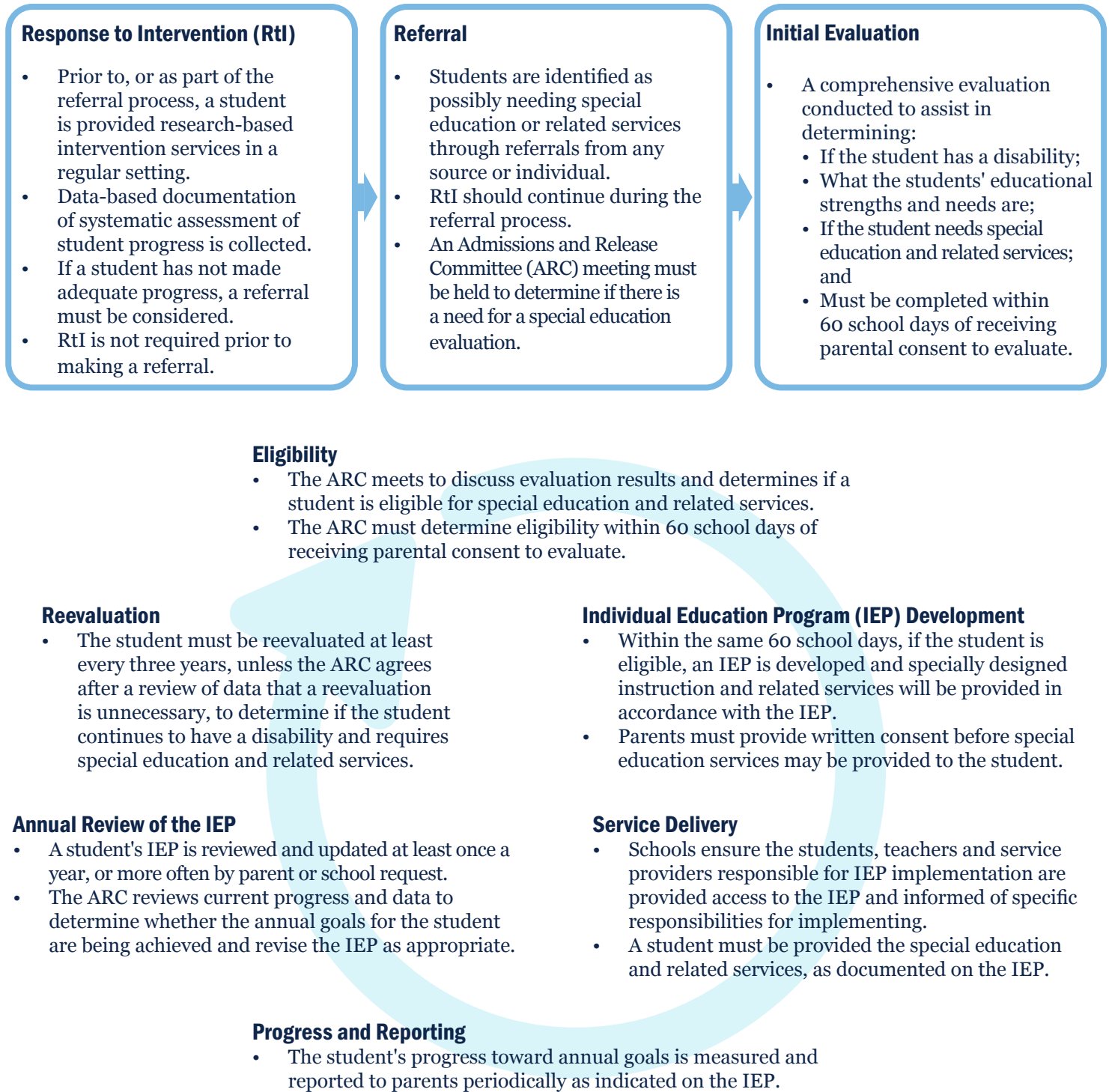
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WHAT IS THE SPECIAL EDUCATION PROCESS?

The “Special Education Process” includes steps by which children are identified as having a disability and in need of special education and related services. Both the Individuals with Disabilities Education Act (IDEA) and Kentucky Administrative Regulations (KARs) require districts to have in effect policies and procedures that plan and implement a [child find system](#) to locate, identify and evaluate children ages 3 to 21 who may need special education and related services. The system must include students in or out of school who reside within the district’s boundaries [[707 KAR 1:300, Section 1 \(1\)](#)]. Review local district policies and procedures for more information on the special education process. Please see the [Kentucky Student Information System \(KSIS\) Data Standards](#) located in the resources for guidance on entering data into the Kentucky Student Information System (KSIS), also known as Infinite Campus (IC).



Below is a graphic representation of the steps for determining a student's initial eligibility for special education and the provision of special education services.



RESPONSE TO INTERVENTION (RtI)

The [Kentucky Multi-Tiered System of Supports \(KyMTSS\)](#) is a multi-level prevention system to support student achievement and social-emotional behavioral competencies through the integration of differentiated core instruction, assessment and intervention. This process is generally referred to as Response to Intervention (RtI). The IDEA and the KARs ensure intervention services are provided before or as part of the initial special

education referral process. However, “It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 [IDEA] for an LEA [local education agency] to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework,” [[Office of Special Education Programs \(OSEP\) Memo 11-07 Response to Intervention \(RtI\) January 21, 2011](#)]. Throughout the KyMTSS process, teachers should fully implement interventions and collect data regarding the effectiveness of these interventions. A student cannot be determined eligible for special education services if the concerns are primarily due to the lack of appropriate instruction or limited English proficiency.

The following requirements must be implemented:

- Relevant research-based instruction and intervention services are provided in regular (general) education settings before or as part of the referral process;
- Instruction and intervention services are provided by qualified personnel;
- Data-based documentation of repeated assessments of achievement or measures of behavior are collected and evaluated at reasonable intervals that reflect the systematic assessment of student progress during instruction; and
- Results are provided to the child’s parents [[707 KAR 1:300, Section 3 \(3\)](#)].

Districts must design an intervention plan for students based on their needs within the general education setting. Many districts include the use of building-level teams to help general education teachers identify ways to address a student’s classroom challenges. Districts must not deny referrals or delay initial evaluation procedures because of RtI implementation [[OSEP Memo 11-07 Response to Intervention \(RtI\) January 21, 2011](#)]. RtI strategies ensure children who are struggling academically and behaviorally are identified early and receive needed interventions, however, the IDEA does not require schools to use RtI before making a referral for evaluation.

REFERRAL SYSTEM

Anyone who suspects a student has special education needs arising from a disability can make a referral for an evaluation. Referrals may be requested by parents or guardians, school personnel or outside agencies. As stated in the "[Kentucky Guide to Special Education Due Process](#)," a request for a referral may be verbal or in writing.

Under Kentucky regulation, each district must have a referral system that explains how they accept or act upon special education referrals from district or non-district sources in a timely manner [[707 KAR 1:300, Section 3](#)]. “If the child has not made adequate progress after an appropriate period of time during which the conditions... have been implemented, a referral for an evaluation to determine if the child needs special education and related services shall be considered,” [[707 KAR 1:300, Section 3 \(4\)](#)]. When a referral is requested, an ARC is convened to determine if there is a need to proceed with a special education evaluation. The ARC must seek parental consent to evaluate within a reasonable period of time after referral if the local education agency (LEA) agrees evaluation is needed [[OSEP Memo 11-07 Response to Intervention \(RTI\) \(January 21, 2011\)](#)]. Parental consent must be given prior to proceeding with an evaluation.

INITIAL EVALUATION

When conducting an initial evaluation, all areas of a student’s functioning shall be considered to determine not only if the student has a disability, but also to determine the student’s educational needs. “An LEA shall ensure that a full and individual evaluation is conducted for each child considered for specially designed instruction and related services prior to the provision of the services,” [[707 KAR 1:300, Section 4 \(1\)](#)]. “The evaluation shall be sufficiently comprehensive to identify all the child’s special education and related service needs ...,” [[707 KAR 1:300, Section 4 \(11\)](#)]. A full and individual evaluation should consider, if appropriate, the student’s:

- Health, Vision, Hearing, Motor Abilities;
- General Intelligence;
- Communication Status;
- Academic Performance;

- Social and Emotional Status;
- Functional Vision/Learning Media Assessment;
- Functional Hearing, Listening, Communication Assessment; and
- Transition Needs.

In addition, [34 §CFR 300.304](#) and [707 KAR 1:300, Section 4](#) require that ARC team decisions cannot rely on any single source of data, interview, observation or instrument. The evaluation must use a variety of assessment tools and strategies [[707 KAR 1:300, Section 4 \(5\)](#)]. The ARC must document the evaluation planning components, data sources and any additional information needed for the evaluation. The evaluation results will be used to assist the ARC in deciding the child’s eligibility for special education and related services and to make decisions about an appropriate educational program for the child. The ARC must determine eligibility within 60 school days of receiving parental consent to evaluate the student [[707 KAR 1:320, Section 2 \(3\)](#)]. Exceptions to the 60-school-day timeline are outlined in [707 KAR 1:320, Section 2 \(5\)](#).

ELIGIBILITY FOR SPECIAL EDUCATION

An ARC must determine if the student meets one of the categories of disabilities defined in [707 KAR 1:002](#) and needs special education and related services [[707 KAR 1:310, Section 1](#)]. The determination of eligibility must be within 60 school days of receiving written parental consent to evaluate [[707 KAR 1:320, Section 2 \(3\)](#)]. To comply with the regulatory requirements, the ARC must consider and triangulate relevant data (qualitative and quantitative) sources and evidence to determine the findings indicate the disability has an adverse effect on the student’s educational performance to justify the need for special education and related services.

“Adverse effect means that the progress of the child is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers,” [[707 KAR 1:002, Section 1 \(2\)](#)]. The term “educational performance” includes both academic and non-academic areas.

As the foundation for the eligibility decision, specific documentation of information and data should demonstrate that multiple sources, including information from parents, were used to substantiate the existence of a disability and to what extent the progress of the student is impeded by their disability [[707 KAR 1:310, Section 1](#)].

The [Evaluation and Eligibility page](#) of the Kentucky Department of Education (KDE) website includes eligibility determination forms, specific to each disability, that are used by the ARC to document the eligibility decision.

If a parent or guardian disagrees with an ARC decision, the [Parent and Family Rights page](#) of the KDE website includes more information regarding the process and parental rights.

DEVELOPING THE INDIVIDUAL EDUCATION PROGRAM (IEP)

“If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed ...,” [[707 KAR 1:310, Section 1 \(6\)](#)]. The IEP is a written program for a student with a disability who is eligible to receive special education and related services under the IDEA. As explained in [707 KAR 1:320, Section 2 \(3\)](#), within 60 days after receiving parental consent for the initial evaluation of a child, the district must accomplish three tasks:

1. Evaluate the child;
2. Develop an IEP for an eligible child; and
3. Provide specially designed instruction and related services to an eligible child in accordance with that IEP.

Requirements for IEP development and implementation are outlined in [707 KAR 1:320](#). More information is provided in the [Guidance for Individual Education Program \(IEP\) Development](#).

DELIVERY OF SERVICES

“Delivery of service” means providing the student with the special education and related services, as documented in the IEP, necessary for the student to advance appropriately toward IEP goals, to be involved in and progress in the general curriculum and participate in other school activities [[34 CFR §300.320](#)]. More information and resources related to the delivery of services are available on the [Guidance and Resources](#) page of the KDE website.

PROGRESS MONITORING AND REPORTING

Progress monitoring is the ongoing process of collecting and analyzing data to determine student progress toward specific skills or general outcomes outlined in the measurable annual goals. The student’s progress toward annual goals and benchmarks (if applicable) must be measured and reported as stated in the IEP [[707 KAR 1:320, Section 5 \(13\)](#)] and should be reviewed during the annual review and/or evaluation process.

More information to support the understanding of the “what” and “why” of progress monitoring as well as how to effectively monitor progress is available on the [Admissions and Release Committee \(ARC\) and Individual Education Program \(IEP\)](#) page of the KDE website.



ANNUAL REVIEW OF THE IEP

The ARC must review the IEP periodically, but at least annually, to determine whether the annual goals for the student are being achieved and revise the IEP as appropriate and in accordance with [34 CFR §300.324 \(b\)\(1\)\(ii\)](#), [[707 KAR 1:320, Section 2 \(6\)\(a\) and \(b\)](#)].

More information is provided in the [Guidance for Individual Education Program \(IEP\) Development](#).

REEVALUATION

A reevaluation is conducted at least every three years (unless, after review of existing data, the parents and school agree that a reevaluation is unnecessary [[707 KAR 1:300, Section 4 \(17-19\)](#)] to determine:

- The student’s present levels of performance and educational needs;
- Whether the student continues to need special education and related services; and
- Whether any additions or modifications are needed to the special education and related services being provided [[707 KAR 1:300, Section 4](#)].

Reevaluation requires that members of the ARC exercise professional judgment when reviewing all evaluation data considering a student’s previous history as well as current progress. If the ARC determines that the student’s gap in learning would re-emerge with the discontinuation of special education services, the student should continue to be identified as being eligible for special education services. If the ARC determines the student does not continue to have a disability or does not continue to need special education and related services, the ARC may determine that it will not continue with special education and related services. The ARC must provide the parent or guardian with prior written notice of its proposal to discontinue the provision of services [[Questions and Answers on Individualized Education Programs \(IEPs\), Evaluations, and Reevaluations](#)].

More information regarding the requirements for parental consent for reevaluations is outlined in [34 CFR §300.300\(c\)](#).

If you have questions or concerns at any point in the special education process, please contact the ARC, the district director of special education (DoSE) or the [KDE Office of Special Education and Early Learning \(OSEEL\)](#).

SPECIAL EDUCATION PROCESS GENERAL RESOURCES

- [Individuals with Disabilities Education Act \(IDEA\) Topic Areas](#) Includes information, policy letters and resources related to the IDEA special education process.
- [Technical Assistance Network](#) Includes a list of technical assistance providers who provide information, support and training for districts, parents and families regarding special education.
- [Center for Parent Information & Resources](#) Provides information, trainings and resources specific to steps in the IDEA special education process provided by the OSEP, other federal agencies and technical assistance centers.
- [Kentucky Special Parent Involvement Network \(KY-SPIN\): IDEA](#) Provides information about special education law and the special education process for ages 3 to 21.
- [OSEP Policy Letter to Nix \(March 17, 2023\)](#) Provides clarification on the referral and transition process for children with disabilities who are transitioning from receiving early intervention services under Part C of the IDEA to being eligible for and receiving preschool services under Part B of the IDEA.
- [OSEP Policy Letter to Zirkel \(May 2, 2019\)](#) Provides a series of questions and answers regarding the rights of a parent to an Independent Education Evaluation (IEE) when a student has been evaluated under the IDEA and found not to be a child with a disability in need of special education and related services.
- [Kentucky Student Information System \(KSIS\) Data Standards](#) Provides guidance to help school districts with entering data into the KSIS, also known as Infinite Campus (IC), regarding each step in the special education process. Data standards for each step include:
 - [Processes](#) (7/3/2023);
 - [KY Conference Summary](#) (7/3/2023);
 - [KY Referral](#) (7/3/2023);
 - [KY Consent for Evaluation](#) (7/3/2023);
 - [KY Evaluation/Eligibility Determination](#) (7/3/2023); and
 - [KY IEP-Private School Service Plan](#) (7/3/2023).

This nonregulatory guidance is designed to work in conjunction with the procedural safeguard protections for students with disabilities under the Individuals with Disabilities Education Act (IDEA). It is intended to be informal guidance representing the interpretation of the applicable statutory or regulatory requirements in the context of the specific facts presented and is not legally binding.

Revision to guidance documents occurs based on feedback the Office of Special Education and Early Learning (OSEEL) receives from the Directors of Special Education (DoSE), state shareholder groups, the KDE's interpretation of law, court cases and guidance from the Office of Special Education Programs (OSEP). The OSEEL also revises guidance documents based on onsite monitoring visits, desk audits and formal written complaints.



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