

## Q and A for Special Education Services in State Agency Education Programs

- 1. During an Admissions and Release Committee (ARC) meeting, who may be used as the general education teacher when the facility only has certified special education teachers?**

According to 707 KAR 1:320 Section 3(b) and federal regulation 34 CFR § 300.321, ARC membership must include a general education teacher *of the student* who can provide information in regards to the curriculum. Special education certified teachers may only serve as a general education teacher in the event they provide general education services to the student. One teacher may not serve in *both* the special education and general education roles. This topic is further addressed in #2.

- 2. Can a special education teacher who teaches both general education and special education students in all classes throughout the day be fully funded by IDEA?**

Teachers who provide both general and special education services may be funded from multiple funding sources including IDEA funds. However, the amount of the teacher's salary paid with IDEA funds cannot exceed the prorated amount of time the teacher spends providing special education and related services described in the individual education programs (IEP) of students with disabilities in the class. The time providing these services should be documented using the 'time and effort' form available upon request from the Division of Learning Services (DLS).

Contact information is provided at the end of this document.

- 3. What if a parent/guardian whose parental rights have not been terminated refuses to participate in the ARC meeting while their student is enrolled at a facility?**

The LEA must invite the parent to participate in an ARC meeting. If the parent is unable to attend, alternate means for participation must be offered (707 KAR 1:340). The LEA must document all attempts to arrange a mutually agreed upon time and place. If the parent does not participate in the ARC meeting, the completed ARC meeting documents must be sent to the parent. (707 KAR 1:320, Section 4 (5)(6))

- 4. Can a school employee be appointed as a surrogate parent?**

A surrogate cannot be employed by the Kentucky Department of Education (KDE), Local Education Agency (LEA) or any other agency that is involved in the education or care of the child. Also, a surrogate shall not have any personal or professional interest that would conflict with the best interest of the student. Surrogate parents must have knowledge and skills to ensure appropriate representation of the student. (707 KAR 1:340, Section 6)

**5. What are the steps to get a surrogate?**

The student's rights are protected by the LEA appointing a surrogate parent to make educational decisions for the child if a parent (as defined in 707 KAR 1:002) cannot be identified. If a parent cannot be located after reasonable efforts are made, the student is a ward of the state or the student is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 then a surrogate parent must be assigned. The LEA must have a procedure for determining the needs for a surrogate parent and assigning the surrogate.

The surrogate "shall not be an employee of the Kentucky Department of Education, the LEA, or any agency involved in the education of the child; shall not have any personal or professional interest which conflicts with the interest of the child; and shall have knowledge and skills that ensure adequate representation of the child". (707 KAR 1:340 section 6 (6))

**6. What does RtI look like in a facility?**

RtI must follow the same guidelines as a comprehensive school setting. *A Guide to the Kentucky System of Interventions* is a resource that may be used to implement RtI at facilities.

**7. How close do we have to meet the IEP that comes with the student if we don't have those services?**

When a student who has an IEP transfers into a facility, the student shall be provided a Free Appropriate Public Education (FAPE) by the facility. This includes services comparable to those described in the previous IEP. These services shall be provided in consultation with the parents and until the receiving facility adopts the previous IEP or develops, adopts, and implements a new IEP. For a student who enters the facility with an IEP, services must continue. A facility cannot deny special education services if a student is found eligible for such services. 707 KAR 1:320, Section 6(1)

**8. Does a court order from a district judge override the ARC decision on placement?**

No. A court order from a district judge changes the student's educational setting not their educational placement. Soon after arrival, the facility must hold an ARC meeting to review and amend the IEP to accurately document the student's current educational setting and special education services.

When a student with an Individualized Education Program (IEP) transfers to a facility in the same state in the same school year, the new public agency (in consultation with the parents) must provide the student with FAPE through services that are comparable to

those described in the student's IEP from the previous public agency until the new public agency either adopts the previous agency's IEP or develops and implements a new IEP for the student. (707 KAR 1:30 Section 1)

The IDEA requirements related to least restrictive environment (LRE) apply to the education of students with disabilities in facilities. ARC's must make individualized placement decisions and may not routinely place all students with disabilities in facilities in classes that include only students with disabilities, even if this means creating placement options or using other arrangements, to the maximum extent appropriate to the student's needs. This may include, for example, having special education and general education teachers co-teach in the general classroom. (Dear Colleague Letter: December 5, 2014)

**9. DJJ manages the behavior of students in juvenile detention facilities. Their techniques are not in compliance with what the IEP says. Solution?**

When entering into a Memorandum of Understanding (MOU) agreement with DJJ, the district must ensure its ability to comply with applicable laws and regulations. When the district receives SEEK funding for these students, it agrees to comply with applicable laws and regulations, including 704 KAR 7:160.

**10. When a student transfers into a facility with an open evaluation, does the 60-day timeline for completion of the evaluation still stand? Can an ARC be held to set a new timeline?**

The 60-day timeline does not apply 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. (707 KAR 1:320 Section 2(5a))

**11. Can you provide the federal regulation citation for PA-4?**

PA-4 is the personnel development section in the State Corrective Education Self-Assessment (SCES) and it relates to federal regulation 34 CFR §300.207. This is not a compliance indicator. However, it is related to the Kentucky regulation 704 KAR 1:760 on the use of physical restraint and seclusion.

**12. Are there only certain options on the continuum that should be considered when a child is in a DJJ facility?**

The same options should be considered as if the student participated in a comprehensive school. According to 707 KAR 1:350, an LEA shall ensure that, to the maximum extent

appropriate, children with disabilities, including children placed by the LEA in public or private institutions or other care facilities, are educated with children who are nondisabled. An LEA shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

The continuum shall include the alternative placements of:

- (a) Instruction in general education classes;
- (b) Special classes;
- (c) Special schools;
- (d) Home instruction; and
- (e) Instruction in hospitals and institutions.

The continuum in a facility should begin with instruction in a general education classroom and proceed with considerations of increased supports based on individual student's needs.

### **13. Who should attend the ARC of a student in a facility?**

The **required** ARC membership includes the parents, a general education teacher of the student, a special education teacher, related service personnel as appropriate and a representative of the LEA (707 KAR 1:320 Section 3). Others that **may** be in attendance are a school psychologist, counselors and people who are invited by the parents to name a few. It is highly recommended that an employee of the facility that comes in contact with the student be in attendance. At facilities that only have special education teachers, a special education teacher who offers general education services to the student may act as the general education teacher for the IEP. Another special education teacher will then act as the special education teacher.

### **14. How should it be documented when a student is removed from their educational setting due to behavior?**

All removals must be documented in the Behavior tab within the Kentucky Student Information System (KSIS), known as Infinite Campus (IC). (KRS 158.444)

### **15. Does the time that the student spends outside of the classroom add to the 10 days for a manifestation determination?**

Yes, any removal or patterns of removals in which a student is denied FAPE would count towards the 10 days in regard to a manifestation determination. An in-school suspension would not be considered a part of the days of suspension addressed in 34 CFR 300.530 if the student is afforded the opportunity to continue to appropriately progress in the general curriculum, the facility continues to provide the services specified in the student's IEP and the student continues to participate with nondisabled students to the same extent as

he or she does in his or her current placement. All removals must be documented in IC. (71 Fed. Reg. 46,715 (2006))

**16. How can the school system ensure compliance of outside agencies?**

School districts that receive SEEK funds are responsible for **all** activities that occur in the school setting. Districts can ensure outside agency compliance by including all conditions in a MOU between the district and facility.

**17. Are court-ordered placements into a different educational setting considered a change of placement?**

A court-ordered placement into a different educational setting is not considered a change of placement for special education services. When a student is ordered by the court to a facility, it must be documented in Infinite Campus. KRS 158.444 Section 2(b)

This topic is further addressed in #18.

**18. Does a manifestation determination need to occur upon the court ordered change of educational setting?**

A court-ordered change of educational setting does not require a manifestation determination. The requirements of convening a manifestation determination are the same at facilities as the comprehensive school setting. According to 707 KAR 1:340 Section 14, after the student has been removed from the school setting for 10 consecutive days or a pattern that equals 10 days, the school must convene a manifestation determination to determine if the behavior in question was directly related the student's disability. A manifestation determination must then be completed for each additional out-of-school removal of the student.

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