

Special Education – Policy Development and Key Laws

Kentucky Department of Education
Office of Special Education and Early Learning
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Policy Development

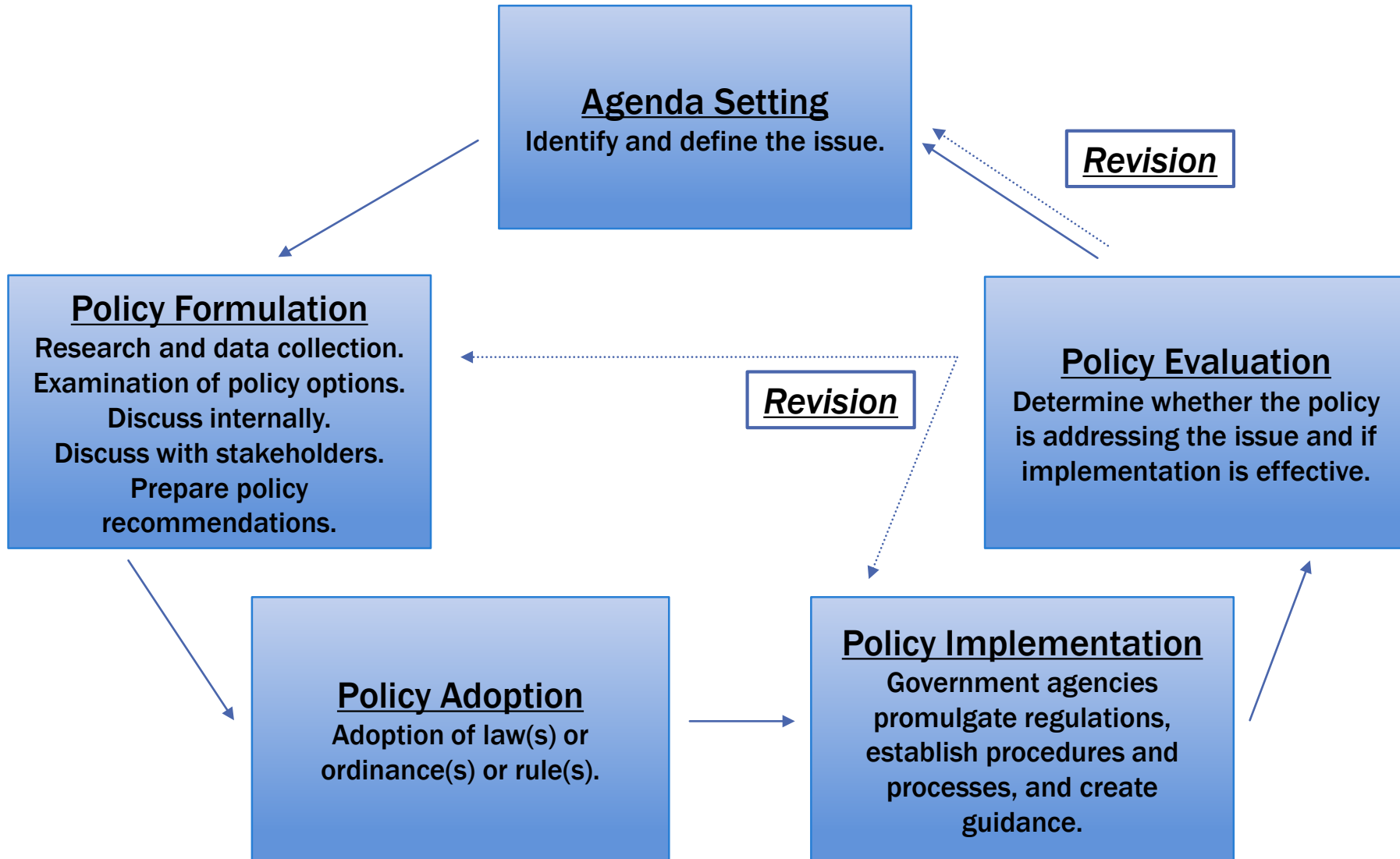
Public Policy

Public policy is generally defined as a system of laws, regulations, and funding priorities related to a given topic promulgated by a governmental entity or its representatives to address a specific issue.

- ▶ Policy development is a dynamic, constantly changing process.
- ▶ Social changes produce demands on the political system, stimulating competition among individuals and groups.
- ▶ New policies produced by political systems then interact with the larger environment, generating new demands to be evaluated and leading to a reassessment of the original policies.



Public Policy Making Process



Considerations

- ▶ Budget – How much does it cost? Any funding provided?
- ▶ Management – Which agency is responsible for implementation?
- ▶ Capacity – Is the agency able to do it? What is missing?
- ▶ Implementation – How? What resources are required? What is the timeline?
- ▶ Impact Analysis – Who will be effected by the policy? What is the policy doing to this group or entity?
- ▶ Evaluation – Does the policy do what we thought it would or should?
- ▶ Refinement – How should we improve, expand or dismantle the policy?



Factors that Influence Policy Development

- ▶ Public opinion
- ▶ Economic conditions
- ▶ New information/data/science
- ▶ Technological change
- ▶ Interest groups
- ▶ Nongovernmental organizations (NGOs)
- ▶ Activists
- ▶ Political parties
- ▶ Foreign influences



Influences on Education Policy Development in Kentucky

- ▶ Governor and staff
- ▶ Legislators and Legislative Research Commission (LRC)
- ▶ LRC's Office of Education Accountability (OEA)
- ▶ Judiciary and Administrative Office of the Courts (AOC)
- ▶ Constitutional Officers
- ▶ Kentucky Board of Education (KBE)
- ▶ Commissioner
- ▶ Agency Staff (Kentucky Department of Education)
- ▶ Local Boards of Education
- ▶ Superintendents
- ▶ Advisory Groups (School Curriculum, Assessment and Accountability Council (SCAAC); the Local Superintendents Advisory Council (LSAC); State Advisory Council for Exceptional Children (SACEC); State Advisory Council for Gifted and Talented Education)
- ▶ K-12 Education Groups (Prichard Committee, Kentucky Association of School Administrators (KASA))
- ▶ National Organizations (Bill and Melinda Gates Foundation, Pew Research Center)
- ▶ Federal Agencies (U.S. Department of Education, U.S. Department of Agriculture)
- ▶ Parents and Voters





OSEEL Goals and Priorities

OSEEL Goals and Priorities

- ▶ Improving instruction and discipline practices for students with disabilities.
- ▶ Enhancing communication and dissemination of information and guidance.
- ▶ Bridging supports from preschool to kindergarten.
- ▶ Fostering parent and family engagement.
- ▶ Preparing, recruiting, and retaining high-quality staff.



Education Litigation



Federal and State Education Litigation

Federal

- ▶ *PARC v. Commonwealth of Pennsylvania* 1971
- ▶ *Mills v. Board of Education of the District of Columbia* 1972
 - *PARC* was the first right-to-education suit in the country and overturned a Pennsylvania law to allow all children equal access to educational services. The case was argued before the U.S. District Court for the Eastern District of Pennsylvania. In the resulting consent decree, the state agreed to provide a free public education for children with an intellectual disability.
 - *Mills* was a similar case that also ruled that students with disabilities must be provided a public education even if students were unable to pay for the costs of the education.
- ▶ These cases became the basis for the Education for All Handicapped Children Act (PL 94-142) enacted in 1975 which today is IDEA.



Federal and State Education Litigation

Federal

▶ *Board of Education v. Rowley* 1982

- The U.S. Supreme Court's first interpretation of the Education for All Handicapped Children Act.
- A deaf student's parents requested a sign language interpreter in addition to the hearing aid provided by the school. The school refused, stating that the student was advancing academically and did not need an interpreter. The parents claimed the student did not understand everything in class and was not reaching her full academic potential. The parent sued alleging a violation of the Act.
- The U.S. Supreme Court ruled that "appropriate public education" as defined by the Act "consists of **access** to specialized education and related services which are **individually designed** to provide **educational benefit** to the handicapped child."
- There is "no requirement... that States maximize the potential of handicapped children 'commensurate with the opportunity provided to other children.'"
- The U.S. Supreme Court specifically declined to "establish any one test for determining adequacy of educational benefits conferred upon all children covered by the Act."
- Appeals to the legal system under the Act limited to questions of whether the state complied with the ACT and whether the IEP is reasonably calculated to enable the child to receive educational benefits.



Federal and State Education Litigation

Federal

▶ *Endrew F. v. Douglas County School District* 2017

- A student with autism made almost no progress on the IEP goals and began having severe behavioral issues. The parents removed the student to a private school specializing in serving autistic students and sued the school district for reimbursement of tuition. The parents argued that the school district was not compliant with IDEA because their child did not have an “equal opportunity” to achieve success like other kids. The school district argued that under IDEA the student only had the right to some educational benefit.
- The U.S. Supreme ruled that IEPs must give students with disabilities more than a *de minimis* (i.e. minimal) educational benefit.
- “A school must offer an IEP reasonably calculated to enable a child to make **progress appropriate in light of the child’s circumstances.**”
- “Every child should have the chance to meet challenging objectives.”
- “Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.”



Federal and State Education Litigation

State

Rose v. Council for Better Education (1989)

- The Kentucky Supreme Court ruled that the General Assembly had not satisfied its constitutional requirement to provide for “an efficient system of common schools throughout the State”. Ky. Constitution Section 183.
- The Court found the entire existing educational system unconstitutional.
- The Court found an “efficient system of common schools” meant:
 - ✓ General Assembly responsible for establishing, maintaining, funding and monitoring schools.
 - ✓ Schools are free, freely available, and substantially uniform.
 - ✓ Equal educational opportunity for all students.
 - ✓ All students have a fundamental right to an “adequate education,” defined as having the goal of sufficiently providing each child with knowledge and skills in seven defined areas.





Federal and State Laws

Major Federal and State Laws

Federal

- ▶ [Every Student Succeeds Act \(ESSA\)](#) 2015
- ▶ [Individuals with Disabilities Education Act \(IDEA\)](#) 2004
- ▶ [Americans with Disabilities Act \(ADA\)](#) 1990
- ▶ [Family Educational Rights and Privacy Act \(FERPA\)](#) 1974
- ▶ [The Rehabilitation Act \(Rehab Act\)](#) 1973
 - Section 504

State

- ▶ Kentucky Educational Excellence Scholarship (KEES) 1998
- ▶ Postsecondary Education Improvement Act 1997
- ▶ Kentucky Education Reform Act (KERA) 1990
- ▶ The Kentucky Authority for Educational Television (KET) 1962



Every Student Succeeds Act (ESSA)

ESSA was reauthorized in 2015 (the Elementary and Secondary Education ACT (ESEA) of 1965).

- ▶ Federal law that governs how state and local education agencies conduct K-12 education and ensures educational opportunity for every child and provides support for schools.
- ▶ Requires states to submit a State Plan. Kentucky revised its Consolidated State Plan in March 2019.
- ▶ Kentucky is updating its accountability system.
- ▶ Kentucky is adopting new academic standards which are set forth in regulation: 704 KAR Chapter 8.



Every Student Succeeds Act (ESSA)

▶ ESSA key provisions:

- Eliminated Adequate Yearly Progress (AYP).
- Requires states to identify schools in need of [Comprehensive Support and Improvement \(CSI\)](#), [Targeted Support and Improvement \(TSI\)](#), Additional Targeted Support (ATSI), and any additional state-determined categories of schools.
- District intervention occurs:
 - ✓ Lowest performing 5 percent of Title 1 schools (based on full accountability measures).
 - ✓ High schools with graduation rates below 67 percent.
 - ✓ Schools with “consistently underperforming” subgroups.
- Allows for alternate academic achievement standards for students with most significant cognitive disabilities.
- Maintains annual state testing in reading and math in grades 3-8 and once in high school.
- Maintains 95 percent participation rate for state tests (opt out provisions).
- Includes English language learners in state testing.
- Eliminated 50 competitive programs (Carol M. White Physical Education Program; Elementary and Secondary School Counseling; Math and Science Partnerships).
- Requires district to set aside 1 percent of Title I funds to involve parents in the school community.



Individuals with Disabilities Education Act (IDEA)

IDEA was reauthorized in 2004.

- ▶ The IDEA governs how state and local education agencies make available a free and appropriate public education (FAPE) to those eligible students through specially-designed instruction and related services to students with disabilities.
 - **Part A** covers general provisions of the law.
 - **Part B** covers educational guidelines for school children ages 3-21.
 - **Part C** covers infants and toddlers with disabilities, including children from birth to age three.
 - **Part D** covers national support programs administered at the federal level.



Individuals with Disabilities Education Act (IDEA)

IDEA is the federal law that governs how state and local education agencies provide educational opportunities for students between the ages of 3-21 with disabilities that adversely affect their education.

▶ **IDEA defines 13 specific categories of eligibility** (While there are 13 federal categories, Kentucky captures 14 categories as we bifurcate data for Intellectual Disability into: Functional Mental Disability and Mild Mental Disability.)

- Autism
- Deaf-Blindness
- Developmental Delay
- Emotional-Behavioral Disability
- Functional Mental Disability
- Hearing Impairment
- Mild Mental Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment



Individuals with Disabilities Education Act (IDEA)

Kentucky's December 1 IDEA Child Count (Ages 3-21)

Disability Category	2011	2012	2013	2014	2015	2016	2017	2018
Autism	4,378	4,839	5,381	5,793	6,345	6,943	7,427	8,040
Deaf-Blindness	17	16	13	13	13	13	12	12
Developmental Delay	13,054	12,984	12,993	13,315	13,644	13,883	14,360	14,654
Emotional-Behavioral Disability	4,934	4,742	4,653	4,452	4,430	4,502	4,475	4,551
Functional Mental Disability	3,104	3,076	3,099	3,064	3,121	3,107	3,099	3,053
Hearing Impairment	752	710	716	707	702	705	701	695
Mild Mental Disability	11,669	10,968	10,522	10,264	10,170	10,315	10,483	10,567
Multiple Disabilities	2,537	2,301	2,172	2,114	2,050	2,011	2,010	2,008
Orthopedic Impairment	528	523	505	476	471	485	459	438
Other Health Impairment	14,049	13,581	13,576	13,532	13,956	14,448	14,995	15,456
Specific Learning Disability	13,954	14,155	14,451	15,079	15,699	16,419	17,110	17,643
Speech or Language Impairment	29,032	28,870	28,625	28,249	27,916	27,940	28,331	28,324
Traumatic Brain Injury	215	225	230	228	234	229	226	219
Visual Impairment	561	564	531	534	534	579	582	593
Statewide Count (Ages 3-21)	98,784	97,554	97,467	97,820	99,285	101,579	104,270	106,253



Individuals with Disabilities Education Act (IDEA)

- ▶ All students with disabilities eligible under the IDEA must receive a **free appropriate public education (FAPE)**.
 - No exceptions based on disability type or severity.
- ▶ All states must establish a **child find system**.
 - Identify, locate, and evaluate all students suspected of having a disability.
 - Applies to all children birth to age 21.
- ▶ Requires **identification** and **placement decisions** to be based on multiple sources of information.
- ▶ Allows **parents, school personnel, or state personnel** to initiate an evaluation.



Individuals with Disabilities Education Act (IDEA)

- ▶ Sets a **60-day timeframe** for initial evaluation and eligibility decision, unless a parent does not agree to the evaluation.
- ▶ Establishes **procedural safeguards** to ensure parents have meaningful participation in the decision making.
- ▶ Procedural safeguards include:
 - Procedural Safeguards Notice
 - Access to Educational Records
 - Confidentiality of Information
 - Parent Participation
 - Informed Consent (or Parental Consent)
 - Prior Written Notice
 - Understandable Language
 - Independent Educational Evaluation (IEE)
 - “Stay Put” Rights
 - Dispute Resolution Options



Individuals with Disabilities Education Act (IDEA)

- ▶ Students with disabilities must be educated in the **least restrictive environment**.
 - Continuum of services must be available.
- ▶ **Notice** must be given to parents a reasonable amount of time before:
 - Conducting an evaluation for identification.
 - Initial placement in special education.
 - Changes in evaluation, identification, or educational placement.
- ▶ **Independent evaluations** may be obtained at public expense.



Individuals with Disabilities Education Act (IDEA)

- ▶ IDEA includes requirements for assistive technology devices and services.
- ▶ Provisions for **assistive technology** mandated:
 - If necessary to ensure FAPE.
 - Must be considered for all students with disabilities.
- ▶ **Assistive technology device** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.
- ▶ States must submit a plan of **personnel** needed to implement goals of the IDEA.



Individuals with Disabilities Education Act (IDEA)

- ▶ Parents have the right to disagree with the school about what's best for the student. If there is a disagreement, IDEA provides parents with several **dispute resolution options**:
 - *Mediation.*
 - *Formal Written Complaint.*
 - *Due Process Hearing.*
- ▶ Parents can file a **complaint** with:
 - The state education agency if the parent thinks the local education agency is violating IDEA.
 - The Office for Civil Rights for the U.S. Department of Education if a parent believes there is discrimination against the student.
- ▶ Each state is required to maintain a **Parent Training and Information Project** – Kentucky's Special Parent Involvement Network ([KY-SPIN](#)).



Americans with Disabilities Act (ADA) 1990

ADA was signed into law in 1990 and prohibits discrimination on the basis of disability by “public entities” such as state and local government agencies and local education agencies.

- ▶ The ADA requires public entities to make their programs, services and activities accessible to individuals with disabilities.
- ▶ The ADA outlines requirements for:
 - Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination;
 - Identifying architectural barriers; and
 - Communicating effectively with people with hearing, vision and speech disabilities.



Family Educational Rights and Privacy Act (FERPA)

FERPA was signed into law in 1974 (parts amended with the USA Patriot Act of 2001).

- ▶ FERPA is meant to protect the rights of students and to insure the privacy and accuracy of education records.
- ▶ FERPA applies to all institutions that are recipients of federal aid administered by the Secretary of Education.
- ▶ Elementary and secondary education institutions and state education agencies may not disclose information from a student's education records without the student's written consent (with few exceptions).
- ▶ A student has the right to inspect and review his/her education records.
- ▶ A student has the right to request an amendment to his/her education record if the student believes it is inaccurate or misleading.
- ▶ A student has the right to consent to disclose personally identifiable information except for the FERPA exceptions.
- ▶ A student has the right to file a complaint with the U.S. Department of Education concerning alleged failures of an education agency to adhere to FERPA requirements.



Family Educational Rights and Privacy Act (FERPA)

- ▶ An **education record** is any record that is directly related to a student and maintained by an education agency or a party acting for the agency or institution.
- ▶ A record may be, but isn't limited to:
 - Handwriting
 - Print
 - Computer files/data
 - Media such as video or audio tape or film
 - Microfilm or microfiche
- ▶ An education record **DOES NOT INCLUDE**:
 - Records related to treatment provided by a physician, psychiatrist, psychologists, or other recognized professional and disclosed only to individuals providing treatment.
 - Records obtained after an individual is not longer a student.



Family Educational Rights and Privacy Act (FERPA)

- ▶ **Directory information** is information contained in an education record of a student that generally would not be considered harmful or an invasion of privacy if disclosed, such as:
 - Name
 - Home address and telephone number
 - School address and telephone number
 - E-mail address
 - Date of birth
 - Place of birth
 - Country of citizenship
 - Level and year in school
 - Expected graduation date
 - Names of parents or guardians
- ▶ Directory information may be released to third parties without the consent of the student unless the student has requested the information not be released.
- ▶ Directory information may be released unless a student has requested the information not be released.



Rehabilitation Act (Rehab Act) (Section 504) 1973

The Rehabilitation Act of 1973 Section 504 prohibits discrimination against people with disabilities in programs that receive federal financial assistance.

- Recipients of federal funding include public school districts, institutions of higher education, and state and local education agencies.
- ▶ Section 504 works with the ADA and IDEA to protect students with disabilities from exclusion and unequal treatment in schools.
- ▶ Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability.
- ▶ Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.



Kentucky Education Reform Act (KERA) 1990

An efficient system of education must have as its goal to provide each and every child with:

1. Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
2. Sufficient knowledge of economic, social, and political systems to enable the students to make informed choices;
3. Sufficient understanding of governmental processes to enable the students to understand the issues that affect his or her community, state, and nation;
4. Sufficient self-knowledge and knowledge of his or her mental and physical wellness;
5. Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
6. Sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
7. Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.





Links to Laws and Regulations

United States Code and Regulations

▶ United States Code (U.S.C.)

- The U.S.C. contains laws enacted by Congress.
- U.S.C. Title 20 is Education.
- U.S.C. Title 20, Chapter 33 is IDEA.

▶ United States Code of Federal Regulations (CFR)

- The CFR contains rules or directives to clarify a law.
- The rules or directives are promulgated by the authority or agency responsible for implementing and administering the law.
- Title 34 is Education.



Kentucky Statutes and Regulations

▶ Kentucky Revised Statutes (KRS)

- The KRS contains laws enacted by the General Assembly.

▶ Kentucky Administrative Regulations (KAR)

- The KAR contains rules or directives to clarify a law.
- The rules or directives are promulgated by the authority or agency responsible for implementing and administering the law.



Kentucky Statutes and Regulations

- ▶ Kentucky Administrative Regulations (KAR)
 - Title 707 contains regulations related to special education.
 - ✓ **Chapter 1**
 - 002 Definitions
 - 270 Kentucky Special Education Mentor Program
 - 290 Free appropriate public education
 - 300 Child find, evaluation, and reevaluation
 - 310 Determination of eligibility
 - 320 Individual education program
 - 340 Procedural safeguards and state complaint procedures
 - 350 Placement decisions
 - 360 Confidentiality of information
 - 370 Children with disabilities enrolled in private schools
 - 380 Monitoring and recovery of funds



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