

## Definitions of State Agency Children

Kentucky Revised Statute 158.135 1 (a) provides the legal definition of state agency children.

### LEGAL DEFINITION

"State agency children" means:

1. a. Those children of school age committed to or in custody of the Cabinet for Health and Family Services and placed, or financed by the cabinet, in a Cabinet for Health and Family Services operated or contracted institution, treatment center, facility, including those for therapeutic foster care and excluding those for nontherapeutic foster care; or
- b. Those children placed or financed by the Cabinet for Health and Family Services in a private facility pursuant to child care agreements including those for therapeutic foster care and excluding those for nontherapeutic foster care;
2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the mentally retarded; and
3. Those children committed to or in custody of the Department of Juvenile Justice and placed in a department operated or contracted facility or program.

School age children are identified as any child age 5 – 21.

All reimbursement from the state agency children fund will be based on this legal definition.

### DEFINITIONS AND CONDITIONS OF SERVICE

**“Committed to the Cabinet”** means an order of the court has been issued which places a child under the custodial control or supervision of the Cabinet for Health and Family Services, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order.

**“Order of the Court”** means a written direction or command delivered by a court or judge. It is an official proclamation issued by a judge that defines the legal relationship between the parties of a hearing, a trial, an appeal or other court proceedings. Such a ruling requires or authorizes the carrying out of certain steps by one or more parties to a case. A court order must be signed by a judge; some jurisdictions may require it be notarized. This is a legally binding document that identifies the child in question and includes specific directions, expectations or other guidance for a child. It does not include a simple referral or suggestion of services. An official, formal, written court order will be issued if the court has enacted an “order of the court.”

### **Definitions of State Agency Children**

**“Custodial control”** means a person or organization, other than the child in question, has the "sum total" or "full bundle" of parenting powers and responsibilities, exercised exclusively, with respect to the raising and care of the child, decisions and provision of physical, moral and emotional health, personal care, control, place of residence, discipline, religion, education, medical treatment, property, and naming of the child. For the purposes of the Cabinet there is no identifiable distinction between committed to and custodial control, as custodial control is included in the definition of “commitment.”

**“Supervision”** means a child is being monitored by the state agency identified in the court order. This may include the ongoing supervision by the Cabinet as a part of a transition period or probation period, for any other period of time as required by the order of the court and included therein. Supervision may include remote monitoring of the child by the state agency including phone monitoring, regular meetings with the child, review of the child’s progress by an affiliated employee of the state agency as directed by the court order. Supervision does not include students who do not have an order of the court.

**“Custody of the Cabinet”** means a person or organization, other than the child in question, has the "sum total" or "full bundle" of parenting powers and responsibilities, exercised exclusively, with respect to the raising and care of the child, decisions and provision of physical, moral and emotional health, personal care, control, place of residence, discipline, religion, education, medical treatment, property, and naming of the child. For the purposes of the Cabinet there is no identifiable distinction between committed to and custodial control, as custodial control is included in the definition of “commitment.”

**The Cabinet for Health and Family Services** means the Department for Community Based Services; Department for Medicaid Services; and Department for Behavioral Health, Developmental and Intellectual Disabilities, which includes Impact Plus services. Herein referred to as the Cabinet.

**“Placed”** means the child has been assigned a location by one of the identified state agencies or by order of the court. The placement could be in a residential or day program where services are provided to meet the particular student’s needs.

**“Financed by the Cabinet”** means that services provided to the child are paid for by the Cabinet. This may include a per child reimbursement based on a daily rate to a private child care provider through a child care agreement or service contract. This may include reimbursement for services provided to eligible children by the Department of Medicaid Services within the Cabinet.

A program **“operated by the Cabinet”** means that the program is staffed and supervised by the state agency. This means the state agency is responsible for hiring personnel who staff the facility and provide services to the children being served within the facility, with the exception of the education staff that are always hired and supervised by the local education agency (i.e. the local school district). At this time, there are no programs “operated” by the Cabinet.

### **Definitions of State Agency Children**

A program **“contracted by the Cabinet”** means that the state agency has entered into a formal, written agreement with the program to provide services for children. This means the program has responsibility, as identified in the agreement, for hiring and supervising the treatment staff that delivers services to the children. These include any program that has a child care agreement with DCBS or a service contract through Behavioral Health. Entering into a contract with KECSAC does not constitute a contract with the Cabinet or DJJ.

**“A Cabinet for Health and Family Services operated or contracted institution”** means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, medical, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

**“A Cabinet for Health and Family Services operated or contracted treatment facility”** means a facility with more than eight (8) beds designated by the Cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional.

**“A Cabinet for Health and Family Services operated or contracted facility”** means any facility or group home providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility, excluding a state facility or one certified by an appropriate agency and operated primarily for educational or medical purposes.

**“Therapeutic foster care”** means a remedial care program for troubled children and youth that is in the least restrictive environment where the foster parent is trained to implement planned, remedial supervision and care leading to positive changes in the child's behavior. Children served in this placement have serious emotional problems and meet one (1) or more of the following criteria:

1. Imminent release from a treatment facility;
2. Aggressive or destructive behavior;
3. At risk of being placed in more restrictive settings, including institutionalization;
- or
4. Numerous placement failures.

Youth in therapeutic foster care (TFC) are assigned caseworkers by the private provider. Caseworkers are on-call 24 hours a day, 7 days a week to assist with problems that may occur. Youth placed in TFC receive a full range of treatment services including individual and group counseling, socialization groups, recreational and educational programs, and any other community resources that can be readily accessed.

**“Nontherapeutic foster care”** means those children who are involved in the foster care system, but do not meet the definition above as it relates to therapeutic foster care.

**“Private Facility”** means a private, not state operated, program which provides care or treatment for children on a per child contractual or financed basis.

### **Definitions of State Agency Children**

**“Child care agreements”** means a formal agreement between the Cabinet and a private facility that identifies the specific services provided, the expectations of the Cabinet and any obligations on the part of either parties on behalf of the children being served or the state agencies. A child care license in itself is not a child care agreement. Every agency providing care to children must have a child care license provided by the Office of the Inspector General; however, not every provider who has a child care license has a child care agreement with the Cabinet. A child care agreement is a contractual agreement between the agency and the Cabinet (i.e., a Memorandum of Agreement, a Memorandum of Understanding, or a Contract). A service provider contract with Behavioral Health will serve as a child care agreement.

**“Home”** means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet (KRS 600.020).

**“Community-based services”** means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the Cabinet, which is located within a reasonable proximity of the child's family and home community.

**“Intermediate care facility services”** means nursing facility services and intermediate care facility for individuals with mental retardation or a developmental disability services.

"Intermediate care facility for individuals with mental retardation or a developmental disability" or "ICF-MR-DD" means a licensed intermediate care facility for individuals with mental retardation or a developmental disability certified to the Department for Medicaid Services as meeting all standards for an intermediate care facility for individuals with mental retardation or a developmental disability.

"Intermediate care facility for individuals with mental retardation or a developmental disability services" means care provided:

- (a) To a Medicaid-eligible individual who meets ICF-MR-DD patient status criteria in accordance with Section 4 of this administrative regulation; and
- (b) By an ICF-MR-DD participating in the Medicaid Program.

**“Mentally retarded”** as identified in regards to operations and services of group homes means:

**“Developmental disability”** means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in areas of major life activity including self-care, receptive and expressive language, learning, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration.

**“Mental retardation”** means a significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior which is first manifested during the developmental period.

### **Definitions of State Agency Children**

**“Committed to the Department of Juvenile Justice”** means an order of the court has been issued which places a child under the custodial control or supervision of the Department of Juvenile Justice or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order (KRS 600.020).

**“Order of the Court”** means a written direction or command delivered by a court or judge. It is an official proclamation issued by a judge that defines the legal relationship between the parties of a hearing, a trial, an appeal or other court proceedings. Such a ruling requires or authorizes the carrying out of certain steps by one or more parties to a case. A court order must be signed by a judge; some jurisdictions may require it be notarized. This is a legally binding document that identifies the child in question and includes specific directions, expectations or other guidance for a child. It does not include a simple referral or suggestion of services. An official, formal, written court order will be issued if the court has enacted an “order of the court.”

**“Custodial control”** means a person or organization, other than the child in question, has the "sum total" or "full bundle" of parenting powers and responsibilities, exercised exclusively, with respect to the raising and care of the child, decisions and provision of physical, moral and emotional health, personal care, control, place of residence, discipline, religion, education, medical treatment, property, and naming of the child.

**“Supervision”** means a child is being monitored by the state agency identified in the court order. This may include the ongoing supervision by the Cabinet as a part of a transition period or probation period, for any other period of time as required by the order of the court and included therein. Supervision may include remote monitoring of the child by the state agency including phone monitoring, regular meetings with the child, review of the child’s progress by an affiliated employee of the state agency as directed by the court order. Supervision does not include students who do not have an order of the court.

**“Custody of the Department of Juvenile Justice”** means a person or organization, other than the child in question, has the “sum total” or “full bundle” of parenting powers and responsibilities, exercised exclusively, with respect to the raising and care of the child, decisions and provision of physical, moral and emotional health, personal care, control, place of residence, discipline, religion, education, medical treatment, property, and naming of the child. In the case of the Department of Juvenile Justice, it should be noted that custodial control is very rarely removed from the parental unit of the child. Therefore, in most cases, the Department must seek the permission of the custody holder to act on the child’s behalf in making decisions related to the above noted areas of power and responsibility.

### **Definitions of State Agency Children**

**“A Department of Juvenile Justice operated facility or program”** means the program is staffed and supervised by the state agency. This means the state agency is responsible for hiring personnel who staff the facility and provide services to the children being served with the facility, with the exception of the education staff that are always hired and supervised by the local education agency (i.e. the local school district). The Department of Juvenile Justice has several types of programs that are “operated” by the Department including, but not limited to: youth development centers, detention centers, day treatment centers and group homes.

**“A Department of Juvenile Justice contracted facility program”** means the state agency has entered into a formal, written agreement with the school district to provide services for children. This means the school district has responsibility, as identified in the agreement, for hiring and supervising the treatment staff that deliver services to the children. The Department of Juvenile Justice has several types of programs that are “contracted” by the Department, including, but not limited to: day treatment centers, group homes, and treatment centers. Entering in a contract with KECSAC does not constitute a contract with the Cabinet or DJJ.

#### **YOUTH WHO DO NOT MEET LEGAL DEFINITION**

Children served in alternative placements that do not meet the definition of a state agency child may include, but are not limited to:

- Students referred directly by the local school district.
- Students referred by the Administrative Office of the Courts, without an official court order defined herewithin.
- Students who are referred to the program by a local, state, or regional judge without an official court order.
- Students who have a court designated worker or case worker, but do not have a court order identifying location of placement, terms of placement, length of placement, commitment or custody of the child.
- Any student who is in a private placement within a Cabinet contracted or operated program who is not being funded by the Cabinet, or is not committed or in the custody of the Cabinet (i.e. children who are placed in a facility by a legal guardian who is paying for the services privately either directly or through private insurance or by some other non-Cabinet means).
- Students who are out-of-state residents are not State Agency Children, even if the services are being provided by an in-state agency.
- A child being served in a Mental Health Day Treatment center who is not being financed by the Cabinet through Medicaid Services or another Cabinet fund would not be eligible for KECSAC funding.

**Definitions of State Agency Children**

**REFERENCES:**

- KRS 158.135
- KRS 159.010
- KRS 159.150
- KRS 158.030
- KRS 158.031
- KRS 600.020
- 505 KAR 1:080
- 907 KAR 1:022
- 902 KAR 20:078

Adopted/Amended:

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